

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7010
74-2657
74-2614

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellant-Appellee

against

GEON INDUSTRIES, INC., et al.,

GEON INDUSTRIES, INC. and GEORGE O. NEUWITH,

Defendants-Appellants

FRANK BLOOM and EDWARDS & HANLY,

Defendant-Appellees



On Appeal from the United States District
Court for the Southern District of New York

APPENDIX OF APPELLANT SECURITIES AND EXCHANGE COMMISSION

VOLUME IV

TRANSCRIPTS

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MR. TIMMENY: Your Honor, plaintiff calls as its next witness, Mr. Scott Foster.

DAVID SCOTT FOSTER, JR., called as a witness in behalf of the plaintiff, being first duly sworn by the clerk of the Court testified as follows:

DIRECT EXAMINATION

BY MR. TIMMENY:

Q Mr. Foster, where are you employed?

A I'm employed with Pershing and Company, 120 Broadway, New York.

Q Are you a partner in Pershing and Co.?

A I am an officer. It's a corporation. I'm an officer. I am currently active on the floor of the New York Stock Exchange, and formerly an active member of the American Stock Exchange, and I have retained my membership on the American.

Q At one time you were a floor official on the American Stock Exchange, were you not?

A That's correct.

Q When did you become a floor official?

A I believe I first became a floor official in 1970.

THE COURT: What does that mean, floor official?

THE WITNESS: Floor official is an active member of a brokerage firm who may be a specialist or a commission

1 camcg 61 Foster-direct

2 broker who takes responsibilities on the floor to insure
3 orderly markets and, in effect, act as an overseer of the
4 entire trading practices.

5 THE COURT: So in doing that he is doing that for
6 the Exchange, I take it; is that correct?

7 THE WITNESS: Yes, sir.

8 Q Mr. Foster, you were a floor official in February,
9 specifically February 21 and 22?

10 A That's correct.

11 Q Would you describe the events concerning trading in
12 Geon Industries Shares on the morning of February 22?

13 THE COURT: Did you have any particular interest
14 in Geon? Were you a specialist with Geon in that time?

15 THE WITNESS: No, your Honor. My interest simply --

16 THE COURT: Was as a floor official?

17 THE WITNESS: (Continuing) Was as an official.
18 I had no interest.

19 THE COURT: All right.

20 Q Would you continue?

21 A Yes. This is going back several months, but from
22 memory I believe I have the facts pretty well in hand.

23 I recall on the morning in question prior to the
24 opening of the Exchange, prior to 10 o'clock, the specialist
25 requested that I take a look at a situation he felt was un-

usual in Geon.

THE COURT: What was this specialist's name?

THE WITNESS: The specialist that I spoke to was Mr. Poster, Dennis Poster.

THE COURT: P-o-s-t-e-r.

THE WITNESS: I believe he was the individual that asked me for some help in this situation. He also was a floor official, I believe, at the time. He was aware of the practices that normally should be observed when there is an unusual situation.

He informed me that he felt this type of situation was evident prior to the opening of the market. At this time he told me that there were approximately 10,000 shares to sell. The day before --

THE COURT: Is it correct a specialist keeps a book? Does he keep a book on the orders?

THE WITNESS: Yes, sir. The focal point --

THE COURT: He is looking at his book with these orders to sell?

THE WITNESS: Yes, sir. From the action of the previous day and days this was an unusual amount of stock. He requested me to go to what we call the hot line and discuss it with the American Exchange Staff. The normal procedure is to have them call the company and find out

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Foster-direct

anything they can about why they have the situation that is out of the ordinary, and does the company know anything.

At this time, prior to going to the phone, the arbitrageur bidders, the professionals who wanted to buy the stock, were not happy with the fact that I might not allow it to open. They thought the stock should open and they wanted at that time to pay 14 and three quarters for all the stock that was offered.

THE COURT: What did the market close at?

THE WITNESS: I believe the previous close was 14 and 7, or 14 and three quarters.

THE COURT: The previous night's closing?

THE WITNESS: Yes.

THE COURT: And the arbitrageurs, all the people talk about them, these are floor members?

THE WITNESS: They are brokers acting for their upstairs partners. They simply want to buy the stock, and then tender it and they make a small profit per share, and in most cases it's marginally profitable.

At this time several of the individuals were very unhappy with the fact that I might not allow it to open, and I said, in my judgment there may be something out of the ordinary, and I am going to call the staff. I told the specialist not to open the stock until I came back.

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Foster-direct

1
2 I went to the phone and I spoke to Randy Gromet who
3 was in charge of this particular stock and asked him if he
4 would find out anything he could and get back to me as quickly
5 as possible.

6 I went back to the specialist and I said, do not
7 open the stock until I have come back to you. I have com-
8 mitted myself as an official now to get some information.

9 Shortly after ten o'clock, in order that the
10 public realize why the stock did not open, it was published
11 on the tape that there was a delay in the open. I don't
12 believe there was any other information in the announcement,
13 but that simply there was going to be a delay, so don't
14 get all up in arms about why it isn't opening.

15 Within 15 minutes, I guess, 15 minutes of that I
16 got a call back from Mr. Gromet who informed me he had
17 spoken to an individual at the company and had been informed
18 that there was no information available to him from the
19 company that should affect the price of the stock, and it was
20 in effect information that should be public.

21 This is what I am interested in as an official.
22 We have a responsibility to make sure the public has all the
23 information so that we can open the stock at a fair price
24 to the buyers and the sellers.

25 With that information I returned to the post and

1 spoke to the specialists. At this time the sell interest had
2 increased from 10,000 to around 13,000 shares.
3

4 THE COURT: The sell orders?

5 THE WITNESS: The size of all of the sell orders.
6 Because of that increase the potential buyers who were in-
7 terested in purchasing the stock had pulled back somewhat
8 and were now willing to pay about 14 and three eighths for
9 the stock.

10 THE COURT: Which would have been about five eighths
11 below the close of the night before?

12 THE WITNESS: A half or three eighths. We indicated,
13 we put an indication on the tape, I believe, that the stock
14 looked like it would open in a range between 14 and three
15 eighths and 14 and three quarters.

16 Q Do you want to tell the Court what an indication is?

17 A Well, an indication is just that, it tells the
18 buyers the sellers, the interested parties, the observers
19 that utilize the tape all over the country what our best
20 information is as to where the stock will open. If they
21 don't feel it's a price they are interested in, they withdraw
22 their buy interest or withdraw their sell interest and we
23 will bring down the area in which they feel the stock is
24 going to open and giving ourselves a little latitude we will
25 open the stock at what we deem is an appropriate time.

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2 With all the information, that the company has said
3 there is nothing we can give you that should affect the
4 opening of the stock, go ahead, I went back in and allowed
5 the public to see that the stock was going to open in a range
6 between 14 and three eighths and 14 and three quarters, and
7 within a few moments opened the stock, or allowed the stock
8 to be opened at 14 and three eighths, the 13,000 shares
9 opened at that price,

10 Q Can you pin down the time now when the stock opened?

11 A I could tell exactly if I had the records, because it's
12 on the tape and it's definitely in the records. I mean,
13 that's a matter of fact and I would rather not guess.

14 Q In any event, Mr. Gromet had called you back before
15 it had opened?

16 A Oh, definitely. I wouldn't be in a position to
17 consider allowing the stock to reopen when we have told
18 everyone involved that the stock is being held up, because we
19 are waiting the information. We had to get that information
20 before I unilaterally could make any possible move. I'm
21 completely restricted as far as what I can do.

22 I then, during the course of the morning, went
23 about my business as a floor broker, and at one point later
24 on I happened to see the activity was continuous in Geon and
25 I saw the stock at this time was selling at around 12.

1
2 I went over to the phone again, and as I recall it
3 was coincidentally at the same time that Mr. Gromet was
4 trying to get ahold of me. We met, sometime there was a lag,
5 and this time we just happened to meet on the phone. And I
6 said, there is something really ~~whacky~~ about this Geon thing,
7 because the stock is now selling at 12.
8

9 He said, I have got to talk to you about it, there
10 is a situation, we have new information that is completely
11 different than the original information that I gave you
12 before.

13 I said, well, is this substantially going to affect
14 the stock? And he said, it certainly is. And I don't think
15 we had even more than a 15 second conversation at that point,
16 because I didn't care what the information was, I had to get
17 back out and stop trading immediately, which I did.

18 I went back out and I had been informed that there
19 was new and substantially different information. My obliga-
20 tion is to stop trading immediately. The stock stopped
21 trading at that time.

22 THE COURT: Do you remember what time of day this
23 was?

24 THE WITNESS: Your Honor, I think that was --

25 THE COURT: Still in the morning?

THE WITNESS: Late morning.

1 camcg 68

Foster-direct

2 THE COURT: Late morning.

3 THE WITNESS: 11:30, maybe. 11:30, something like
4 that. That again would be in the records, the exact time.

5 THE COURT: All right.

6 THE WITNESS: The exact time is a matter of fact.
7 I can also relate the fact that in a subsequent conversation
8 I had a definite feeling Mr. Gromet, who had gotten the in-
9 formation that was made available, had been put in a very
10 difficult position, and I spoke to several floor governors
11 and other individuals about what could rectify a situation of
12 this type, because now we are in a position where the buyers
13 have taken substantial losses in a lot of stock. How could
14 we protect them without harming the sellers?

15 There is no way you can be helpful to both sides.
16 We discussed the situation, and in fact information had come
17 to the Exchange and it was the wrong information, and it put
18 the Exchange in a very, very bad position.

19 It made us look as though we hadn't done the job
20 properly, and I can assure you that I have absolutely every
21 confidence that from the beginning of this until the final
22 stopping of the trading everyone involved did exactly the
23 proper thing, and there can't be any criticism but what the
24 Exchange, both officials and staff, did in the attempt to get
25 the information out and get it to the public, because this is

1 camcg 69

Foster-direct

2 what our obligation is and it was done well.

3 Q You said everyone involved --

4 THE COURT: What you are saying is, as I understand
5 it, that the company's failure to tell you at the time they
6 had this first conversation with Gromet, what you learned
7 later on in the morning after another conversation, led to
8 the stock trading opening and a lot of people buying and
9 selling, and the stock went down to 12; is that the point
10 you are making?

11 THE WITNESS: Well, yes, your Honor, because when
12 we receive information of any type it disseminated so that
13 both the buyers and the sellers can come together at a fair
14 price.

15 THE COURT: All right.

16 THE WITNESS: And the opening at that time, the
17 initial opening was at a price that was obviously not a fair
18 price.

19 THE COURT: You don't really mean that. What you
20 say is, I take it, that had you known the information at the
21 time you opened it you might well have thought differently
22 about the price it was opened at.

23 THE WITNESS: That's right.

24 THE COURT: All right.

25 MR. TIMMENY: I have no further questions, your

Honor.

THE COURT: Cross-examination, Mr. Strum.

CROSS-EXAMINATION

BY MR. STRUM:

Q Mr. Foster, directing your attention to your first conversation with Mr. Gromet on that Friday morning, can you tell me as best you recall what you said to him?

A Yes. I am rather restricted in what I can say. I can only pass on to him the information that is available to me.

As I recall, I mentioned to him that probably as closely as I can remember we have a situation in Geon, we are all aware that there is a tender offer, or whatever, that is going on, but there are accumulated ten thousand shares to sell. This is unusual. The specialist feels it is unusual. I think it is unusual. And is there anything, is there any news that you know about, and is there anything you can find out from the company that would be helpful to us in determining what we should do? I simply present him with the facts that are evident, that's all.

Q Did you say to Mr. Gromet that there was imbalance of orders?

A No.

Q Because in fact there was no imbalance, was there?

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Foster-cross

1
2 A There was no imbalance. As a matter of fact, the
3 arbitrageurs wanted to buy the stock. I couldn't say, no,
4 there is not an imbalance.

5 THE COURT: The book on both sides would balance,
6 then the arbitrageurs would take the stock.

7 THE WITNESS: They would take the stock. Imbalance
8 would be, not the proper word, but there would be an un-
9 balanced and larger than normal sell interest which had
10 accumulated at that time that was way out of the ordinary.

11 Q Did you tell Mr. Gromet that there were these
12 arbitrageurs ready and waiting to pick up the stock?

13 A Well, this is normal in a situation like this where
14 there is a tender. The arbitrageurs had been there the day
15 before and were expected to be there on this particular day.

16 Q Yes, but did you say that to Mr. Gromet, that there
17 were these arbitrageurs who would buy the stock.

18 A I'm sure I did. I explained the whole situation to
19 him.

20 THE COURT: You say there was an unusual number of
21 sell orders. I take it this was a result of talking to the
22 specialist, Mr. Poster. You didn't keep the book, but Mr.
23 Poster told you that?

24 THE WITNESS: Yes, your Honor.

25 THE COURT: All right.

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Foster-cross

Q Mr. Foster, I believe you said that 10,000 shares for sale struck you as unusual in Geon stock; is that correct, sir?

A It didn't strike me as unusual by itself. It struck me as unusual because the specialist who had been trading in that stock during the course of the arbitrage situation indicated to me that he had never seen this appear before and he didn't see the reason for this type of order coming in.

He indicated to me it was unusual. I then said, it is unusual if he says it.

THE COURT: The fellow who keeps the books, the fellow who knows that, he can tell, he keeps it daily, and he knows when there are a large number of sell orders.

Q Were you then familiar with the volume in Geon in the prior part of the week?

A He may have mentioned it to me.

THE COURT: You wouldn't know yourself.

THE WITNESS: I wouldn't know unless -- I could check it very quickly. As a matter of fact, I could very easily have spoken to the specialist about it and he could have mentioned it to me that the volume yesterday as the whole day was only a certain amount, so this is way out of the ordinary relation to the four days' volume.

Q Do you recall your discussion with the specialist,

Mr. Foster?

A I really can't say that I recall that exactly, because I was involved in so many situations that are similar to this that that didn't -- it doesn't strike me as something I remember offhand as actually discussing, no.

Q So that if I asked you what the volume was on Wednesday, the 20th, you wouldn't be able to tell me, in Geon stock?

MR. TIMMENY: Your Honor, is it clear that we are talking about opening volume as opposed to --

THE WITNESS: No, we are talking about total days volume.

MR. STRUM: That's right.

THE WITNESS: This is four months ago, and I haven't checked it. I haven't looked at it.

THE COURT: These fellows can check this all out.

THE WITNESS: It could be 14,000 shares. That just comes to my mind, but I don't know whether that's accurate or not. But that's just from the top of my head.

THE COURT: That's something that's pretty easy to find out.

THE WITNESS: Sure, that's a matter of record.

MR. STRUM: We have those figures, your Honor.

THE COURT: What's that?

camcg 74

Foster-cross

MR. STRUM: I have those figures right here.

THE COURT: All right, then, why are you worrying him? He can't remember all these things.

BY MR. STRUM:

Q Mr. Foster, that morning did you have any conversations with arbitrageurs interested in Geon stock?

A Several.

Q Can you identify them please?

A By name, no. But I clearly remember the conversations because one arbitrageur in particular attempted to tell me that I could not stop him from buying stock, and I informed him that I could stop him from buying stock. He informed me that he was going to take me upstairs, and I informed him that that would be a very interesting contest. And I informed him after the stock opened at 14 and three eighths that I saved him three eighths of a dollar on everything he bought. And he was wrong in the first place. And he apologized later.

THE COURT: Do you remember that man's name.

THE WITNESS: I do not remember his name.

THE COURT: He was a member of the Exchange?

THE WITNESS: A member of the Exchange, and one of about five.

Q Do you remember what firm he was connected with?

1 camcg 75

Foster-cross

2 A No.

3 Q Do you recall any other conversations you had with
4 arbitrageurs that morning?

5 A No. Most were standing around listening to this
6 conversation.

7 THE COURT: Was this a busy day on the market, or a
8 slow day?

9 THE WITNESS: Well, this day was one of the most we
10 have had this year which have been slow, unfortunately.

11 THE COURT: They have all been slow, but this was
12 not as slow as some days.

13 THE WITNESS: Well, your Honor, it's a different
14 picture if you are an official and have to be in the middle
15 of all the baffles, then it's a more busy day.

16 BY MR. STRUM:

17 Q Mr. Foster, do you know who offered the 10,000 shares
18 for sale before the opening?

19 A Do I know?

20 Q Do you know the identity of the proposed seller?

21 A At that time I knew that there were various orders
22 to sell 10,000 shares. It was not one piece because then we
23 would have immediately identified them. I don't think there
24 were -- probably a scattered group of sellers.

25 Q Do you know who they were?

1 camcg 76

Foster-cross

2 A I don't know who they were. I didn't know who they
3 were, and from reading the papers since I might have read
4 who they are, but I don't know myself.

5 THE COURT: But you didn't at that time?

6 THE WITNESS: I didn't at that time.

7 THE COURT: In other words, you didn't say to Poster,
8 who is putting in these orders?

9 THE WITNESS: No, but I probably asked him, is there
10 a concentration of one or two people, is it one order or
11 something like that? If it was, we would then go to that
12 seller, or sellers, if it were a small group, and say, what
13 is going on? But in this particular case we did not go to a
14 small group and say, what's going on, because it was not a
15 small group of one or two people that were offering the
16 stock.

17 Q After the stock opened on Friday morning, Mr. Foster,
18 did you call Mr. Gromet to inform him that the stock had
19 opened?

20 A I don't remember the conversation. I very well may
21 have.

22 THE COURT: You don't remember actually --

23 THE WITNESS: I don't remember actually calling him
24 to tell him it opened, because that information would be
25 fed into the system to the staff and the people at the desk

1 camcg 77 Foster-cross

2 and everything else.

3 Q But my question, sir, is whether you have a recol-
4 lection calling him.

5 THE COURT: He doesn't.

6 A No.

7 Q Do you have any recollection of calling him to tell
8 him about the indication?

9 THE COURT: What indication?

10 A When we put an indication out where we are going to
11 open the stock.

12 THE COURT: I see. Did you call him about that?

13 THE WITNESS: No, I don't believe so. My only
14 contact with him is to get specific information that is going
15 to be helpful to me on the floor in making the decision as
16 to what to do. He gave me that information.

17 From then on it's a floor problem. And I don't
18 have to inform him what it looks like or what we are going
19 to do or what we did. He is in a different area.

20 I consult perhaps with the senior governor on the
21 floor, or another senior governor so that the information is
22 known on the floor. But this is a floor problem and a pro-
23 blem between the floor and the public. But the staff doesn't
24 get involved in what we actually are doing on the floor other
25 than answering the questions we take to them. He answered

1 camcg 78

Foster-cross

2 my question.

3 Q Now, Mr. Foster, toward the end of your direct
4 testimony you made some statements concerning responsibilities
5 of officials at the Exchange with regard to information.
6 I would like to ask you this, sir:

7 In connection with orderly trading is it your
8 opinion that a listed company should publicize unverified
9 information which the officials at the company themselves
10 don't believe?

11 MR. TIMMENY: Objection, your Honor.

12 THE COURT: I am going to sustain the objection on
13 that. I don't think the witness is qualified to answer that
14 question, in the first place. In the second place, I am not
15 sure there is any answer to it. So I will sustain the objec-
16 tion.

17 MR. STRUM: I have no further questions, your
18 Honor.

19 THE COURT: All right, do you have any questions?

20 MR. GORDON: No questions, your Honor.

21 THE COURT: All right. Do you have any other
22 questions?

23 MR. TIMMENY: No, no further questions, your Honor.

24 THE COURT: Thank you, Mr. Foster. You're excused.

25 (Witness excused.)

1 camcg 79

Shukovsky-direct

2 MR. DRAKE: Plaintiff will call Mr. Shukovsky, your
3 Honor.

4 D A V I D S H U K O V S K Y, called as a witness in
5 behalf of the plaintiff, being first duly sworn by the
6 clerk of the Court, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. DRAKE:

9 Q State your name, please, sir, for the record.

10 A David Joel Shukovsky.

11 Q Mr. Shukovsky, where are you employed, sir?

12 A I am employed at the American Stock Exchange, In-
13 corporated.

14 Q In what capacity, sir?

15 A I am director of corporate practices.

16 Q How long have you been in that position, sir?

17 A Approximately a year and four months.

18 Q What are your duties, Mr. Shukovsky?

19 A I am an attorney, and my duties generally include
20 supervision and responsibility for the Exchange's regulatory
21 responsibilities with respect to listed corporations.

22 Q Directing your attention to the events of February
23 22, 1974, on that occasion did you have an opportunity to
24 talk to Mr. Joe Connolly, sir?

25 A Yes, I did.

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1 camcg 80

Shukovsky-direct

2 Q Would you describe that conversation, sir?

3 A Yes. On February 22 I was provided information by
4 two other employees of the Exchange, Randy Gromet and Arthur
5 Lee, relative to the events which occurred that morning
6 involving the trading in Geon, Incorporated, common stock.

7 My responsibilities, as I indicated earlier, include
8 the regulatory function of the Exchange, and based upon the
9 information provided to me by both Mr. Gromet and Mr. Lee, I
10 felt it was necessary to conduct a meeting with represen-
11 tatives of the company and their counsel to gather information
12 concerning the developments and, therefore, in the afternoon
13 of February 22 I called Joe Connolly who I was advised was
14 counsel to the company, and of course I knew Mr. Connolly from
15 previous meetings, and I told him that we would like to have
16 a meeting on Monday morning at 9 o'clock, that Monday,
17 February 25, at 9 o'clock at the Exchange, and that I would
18 like Mr. Connolly to be there with George Neuwirth, Frank
19 Bloom and anyone else that he thought would be appropriate
20 representing the company so that we could get the facts and
21 details of what had occurred and what the situation was with
22 Geon.

23 When I called Mr. Connolly and told him about the
24 meeting, he said, fine, he would have to check with company
25 personnel to find out if that time and place was convenient

camcg 81

Shukovsky-direct

for them. While we were on the phone I asked him what had happened that morning.

Q Referring to the morning of the 22nd?

A That's correct.

Q All right, sir.

A What the problem was. And he said at that time that apparently Jack Friedman had instructed Frank Bloom not to say anything to anyone regarding the situation in Geon, because they had been inundated with calls from brokers and the like, and that when the Exchange called that Friday morning Mr. Bloom was following his counsel's advice with respect to "everyone" and that he didn't distinguish between the Exchange making an inquiry, because of an order imbalance, and anyone else.

Q All right, sir.

A During that conversation with Mr. Connolly I told him that I thought it was necessary under the circumstances, the fact that there had been a proposed offer by Burmah-Oil at \$16.80 cents and the fact that the stock had fallen precipitously for the company to make an announcement relative to what had happened.

I also told Mr. Connolly that I thought it would be appropriate for the company to also make a statement relative to the fact that the Exchange had made an inquiry that Friday

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Shukovsky-direct

1 morning and was informed by the company that there were no
2 material --there was no material information to be disclosed
3 at that time.
4

5 Q Did Mr. Connolly indicate to you that they had some-
6 one watching the stock?

7 A Yes. He indicated to me, I told him that I didn't
8 understand what had happened that morning, that we had made
9 the inquiry, we had received assurances that there was no
10 material development, started trading and that the stock
11 declined substantially.

12 He indicated that the company had the belief that
13 perhaps disclosure wasn't necessary, but they had someone
14 watching the stock, and when the stock fell at that time they
15 called the Exchange.

16 Q Subsequent to your conversation on Friday with Mr.
17 Connolly did the meeting take place on Monday, sir, the 25th?

18 A Yes, it did.

19 Q Where was this meeting held, sir?

20 A The meeting was held on the 14th floor of the
21 Exchange building at 86 Trinity Place in New York.

22 Q Who was in attendance at that meeting, sir?

23 A Representing the Exchange was Mr. Edward Peterson,
24 Senior vice president, Stephen Gerard, then an assistant
25 vice president, Randy Gromet, the company's listing represen-

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tative, and myself.

Representing the company was a Mr. Korman, an associate in Kaye Schoeler, I don't recall his first name, Joe Connolly, Jack Friedman, and Frank Bloom.

Q Would you tell us what was discussed at that meeting, sir?

A Yes. The meeting opened with Stephen Gerard stating that, briefly, the fact of the situation on the previous day, and that being the reason why we called the meeting, and asked for an explanation from the company representatives relative to those developments.

At that point Jack Friedman said that they had worked all weekend and that they had a press release they would like to get out so that trading could resume. And he tendered a two-sheet stapled document concerning the proposed press release.

We said that -- I don't remember exactly who, whether it was Steve or myself -- that that was very premature, that we wanted to go over the facts first, and then we talked about press releases and resumption of trading.

Then at that point I believe that Jack Friedman started to relate what had occurred the prior Thursday and stated that in anticipation of the meeting of the board of directors to be held at 4:30 at the offices of Kaye Schoeler

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2 Mr. Bloom had to prepare a, some financial statements relative
3 to the company's fiscal year that had previously ended on
4 December 31, 1973, that afternoon.

5 While he was at the offices of the company on Long
6 Island, and the information was coming in from all over the
7 country, he realized that there were some discrepancies with
8 respect to forecasts and the operating results, and that he
9 was greatly concerned about that.

10 Mr. Friedman said that he gathered as much informa-
11 tion as he could, and then went to the offices of Kaye
12 Schoeler for the board meeting at which I believe Mr.
13 Neuwirth was to attend, Jack Friedman was to attend, Mr.
14 Korman would be there and various other individuals on the
15 board.

16 In any event, when he got there, he, Mr. Friedman,
17 related that Mr. Bloom related to those in attendance that
18 he was greatly shocked at the information he had received.
19 He questioned the validity of that information as far as the
20 accuracy of that information, but, nonetheless, the informa-
21 tion that he had received during the morning in his compila-
22 tions indicated to him that there would be a shortfall in
23 earnings for the company lower than anticipated, lower than
24 anticipated, so as to perhaps have an effect on the proposed
25 transaction with Burmah-Oil.

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Mr. Friedman went on to say that the board reviewed the information, decided not to sign based upon that development, not to sign the contract with Burmah-Oil, and that Bloom was instructed to go back, finish his work, and that he should be prepared to present that information to the board of directors at a subsequent meeting to be held that Sunday night.

Q Was there any conversation with Mr. Bloom?

A Yes. Mr. Bloom interjected, I think at that point, that after the meeting he went back to the offices of the company and with the controller of the company, or a subsidiary, I don't recall whether he indicated the company's controller or a subsidiary's, and they worked back at the plant until midnight gathering information from -- or re-establishing the information, double-checking all the information that they had gotten to see if there were in fact any errors.

Q Was any discussion, sir, about Bloom having a conversation with Mr. Gromet on Friday the 22nd?

A Yes. Mr. Bloom, after we finished the conversation relative to the background and developments of the prior Thursday, we went on then to the developments of Friday morning.

I recall that the entree to that conversation was

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1 that Jack Friedman said something to the effect that perhaps
2 the Exchange did not ask specifically, you know, what was
3 happening, whether we just had inquired whether there was an
4 announcement to make when the Exchange called Mr. Bloom.
5

6 Q Was this different from what Mr. Connolly had told
7 you about Mr. Friedman's and Mr. Bloom's conversation earlier
8 on Friday?

9 A Yes. I don't recall exactly how it was presented,
10 but there is more to what Mr. Bloom said. But by Monday
11 morning the company representatives were indicating that Mr.
12 Bloom had not been instructed by Mr. Friedman not to say
13 anything to anyone, but rather that Mr. Friedman had been
14 on a telephone conversation, a long distance telephone con-
15 versation, had switched off that conversation to speak to Mr.
16 Bloom, and that he said, well, just say we have no announce-
17 ment to make.

18 So that it wasn't an instruction not to say anything
19 to anybody. In any event, Mr. Bloom said that when he
20 received the call from the Exchange he was concerned over the
21 developments of the previous day, and as well as his work
22 product Thursday afternoon, that morning, and that he called
23 Jack Friedman for advice. He said that, Jack Friedman, said
24 that he should say that he had no announcement to make, and
25 then he picked up the phone, Bloom did, and spoke to Randy

1 Gromet.

2
3 Bloom then said, because of that Monday morning
4 meeting, that they -- basically he related very brief, very
5 short conversation in which he said that Randy had asked him,
6 told him of the imbalance on the floor, said, is there any
7 reason for that, are there any -- does the company have any
8 announcement to make?

9 And Mr. Bloom said, no.

10 Then Mr. Gromet, according to Mr. Bloom, said, are
11 there any changes in the status of the Burmah deal? And Mr.
12 Bloom said, no, there are no changes. You know how it is.
13 And apparently -- I'm sorry -- Mr. Bloom also said that,
14 you know how things are, you make a deal over a cocktail, then
15 you have got to work out the problems, and that was the
16 reason for the delay for December's announcement. This is
17 the end of February, and they are working out the problems,
18 but there is nothing material doing and therefore no change
19 in the status of the deal.

20 That was about the sum and substance of Mr. Bloom's
21 recollection of that conversation.

22 Q Well, while he was giving this sum and substance,
23 was he interrupted at the end of the conversation, or did
24 Mr. Gromet interrupt or someone else?

25 A Yes. During Mr. Bloom's recitation, telling us this,

1 Randy leaned over my right and he leaned over during Mr.
2 Bloom's recitation and he said, that's not accurate. I asked
3 him a lot of detailed questions. And, you know, basically
4 telling me very quickly, you know, very low not to interrupt
5 Mr. Bloom, that this was not accurate.
6

7 I said to Randy, if it's not, you know, this is
8 important, let's get the facts out.

9 When Mr. Bloom finished relating what he recollected
10 I said, well, I said Randy, why don't you state what your
11 recollection is? And he did so. And what he said was, well,
12 he directed his remarks to, as I recall, to Mr. Bloom, and
13 he said, didn't we discuss -- didn't I ask you were there
14 any material developments, was there any change in the
15 nature of the Burmah deal, what was causing the delay, and
16 quite a number of questions like that?

17 Mr. Bloom did not contradict, or state that Mr.
18 Gromet's remarks were not accurate, and I believe had nodding
19 confirmation of the fact that those specific questions and
20 substantial questions were asked.

21 At that point Mr. Friedman interjected something to
22 the effect that, well, there apparently is some difference
23 of opinion. And I said at that point, wait a minute, Mr.
24 Bloom, do you know why Mr. Gromet was calling? Do you know
25 what we were interested in finding out? Do you know the

reason for this call?

Mr. Bloom said, yes, I know that the Exchange wanted to know in view of the imbalance were there any material changes, any material developments, whether there should be some disclosures in view of the -- that situation.

I believe that was the end of that part of the conversation.

Q Did you have any conversation with Mr. Connolly concerning Geon or its representatives watching the stock activity?

A Yes. I believe that Mr. Connolly, and my recollection here is not as precise, it may have been Jack Friedman, but later on in that conversation that morning they indicated that perhaps that stock should not -- a representative of the company anyway indicated that perhaps that stock should not have opened that morning, that that was a mistake, and that they did have somebody watching the stock, and when it fell at that point they had called the Exchange to notify us that perhaps the stock should then not be trading because of some developments involving the financial aspects of what had developed on Thursday, and the fact that they were going through the numbers and would have another meeting of the board of directors on Sunday.

Q Did they indicate to you, sir, that they had planned

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2 to watch the stock, and if it fell they would then call the
3 Amex?

4 A Yes, definitely.

5 MR. DRAKE: All right, sir. I have no further
6 questions.

7 THE COURT: How long will you be, Mr. Strum?

8 MR. DRAKE: Just one further question, your Honor.
9 Just to clarify something. This is just one question, too.

10 THE COURT: All right.

11 Q Mr. Shukovsky, you talked about the press release
12 that was discussed at that meeting.

13 Let me hand you SEC Exhibit 10, sir (handing).

14 Is this a copy of that release?

15 A Yes, and no. The release as presented at the begin-
16 ning of the meeting that Monday morning contained, I believe,
17 substantially all the information contained on page one of
18 this release and the continuing, the paragraph continuing
19 onto the second page.

20 I am sorry. Wait a minute. The information contained
21 on the second page as well to the period in the end of the
22 first sentence -- excuse me. All the information on the
23 first page and the information up to the end of the first
24 sentence on the second page. That was the release presented
25 by the company.

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We did get back to discussing this at the end of the meeting. The company insisted at that point they did have this release which summarized the events, we took a look at the release and basically this was a well written release, we had no problem with the contents, and the disclosures made at that point in time.

The company indicated that they had a meeting at 12:30 with Burmah and, of course, we were interested in the developments, and we indicated that certainly under the circumstances we wouldn't be in a position to resume trading in the stock until additional events took place.

However --

Q As a result of your discussions with the Geon's representatives some language changes were made by Geon in the last paragraph; is that correct?

A That's correct.

MR. DRAKE: All right, sir. No further questions.

THE COURT: All right, I think we will take a luncheon recess now and meet again at 20 minutes of two.

(Luncheon recess.)

(Time noted: 12:30 p. m.)

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AFTERNOON SESSION - 1:45 p. m.

THE COURT: You may proceed.

MR. DRAKE: I have one preliminary matter, your Honor. After this witness I think we are finished with our direct examination of him. The plaintiff has one other witness, then we were wanting to call one other witness besides Mr. Rosenfeld who we intended to call -- I am sorry, Mr. Friedman. We will call Mr. Barbanell, Mr. Friedman and Mr. Rosenfeld.

We advised Edwards and Hanley yesterday that we intended to call Mr. Rosenfeld today, and we thought we would be --

THE COURT: Well, we are wasting time. We have got a witness, let's finish up, and if any problems come up, let me know. I have got some people from Washington coming up so I am going to have to adjourn a little after 3 anyway.

Let's go ahead with this.

MR. DRAKE: Your Honor, I have no further questions of Mr. Shukovsky.

THE COURT: All right. Cross-examination, Mr. Strum.

MR. STRUM: Yes, your Honor.

DAVID SHUKOVSKY, previously sworn, resumes.

CROSS-EXAMINATION

1
2 BY MR. STRUM:

3 Q Mr. Shukovsky, I would like to direct your attention
4 to the meeting to which you testified on Monday, February
5 25 at the American Stock Exchange.

6 You testified there was some discussion between Mr.
7 Gromet on the one hand and Mr. Bloom on the other hand as to
8 their prior conversation; is that correct?

9 A That's correct.

10 Q Did Mr. Korman enter into that discussion at all,
11 Mr. Shukovsky?

12 A I don't recall.

13 Q Do you recall any discussion at that meeting about
14 the history of calls to Geon from arbitrageurs?

15 A Yes, I do.

16 Q And can you tell me what you recall in that conver-
17 sation?

18 A Well, I think I testified this morning that Mr.
19 Friedman indicated that the company had been badgered, I
20 think that perhaps was his word, or at least characterized
21 what his feelings were. That the company had been badgered
22 by calls from people on the street, including arbitrageurs,
23 brokers, stockholders, relative to what's happening with the
24 deal. Is it going forward? Is it all -- and so on, and so
25 forth.

1
2 I recall that Mr. Bloom stated his own personal
3 problem with respect to being pressured by people on the
4 street relative to the developments on the Burmah-Oil-Geon
5 transaction. In fact, I remember he said something about
6 being called, and he was really outraged about the fact that
7 he had been called at home late at night by some people on
8 the street.

9 Q Were the names of any arbitrageurs supplied by the
10 Geon people? People who had been involved in this kind of
11 calling.

59 12 A Well, I don't know, you know, arbitrageurs, I don't
13 that --

14 THE COURT: Let's put it, did they indicate the names
15 of any of these people who they said were pressuring them?

16 THE WITNESS: I think they indicated some of the
17 people who had been calling the company, yes.

18 Q Do you recall those names, sir?

19 A I do not.

20 Q Did they ask you to investigate these people with
21 respect of this badgering and calling?

22 A I believe they did request that we pursue some names
23 that they mentioned, yes.

24 Q What was the response, if any, from any of the
25 American Stock Exchange people?

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1
2 A That we would do that. We would look at -- I recall
3 the name of Ivan Boesky of Edwards and Hanley coming up, I
4 believe.

5 THE COURT: Ivan what?

6 THE WITNESS: Ivan Boesky. But I think they said
7 Bolsky at the time. I think it's B-o-e-s-k-y. Among others.
8 I think there were others that were mentioned.

9 Q Do you remember Mr. Royce being mentioned?

10 A Yes, that's correct. Yes, I do recall that.

11 Q Do you recall any conversation at that meeting about
12 Mr. Barbanell?

13 A Yes, I do.

14 Q Would you tell me what you recall and who said it?

15 A Well, Mr. Barbanell's name came up, of course Mr.
16 Barbanell being a director of Geon, and a partner in Loeb
17 Rhoades, I believe in the investment banking section, but I
18 am not exactly sure of that. And Loeb Rhoades was a seller,
19 the brokerage firm was a seller of the stock on that Friday
20 morning.

21 I had a list, our surveillance activities had, so
22 to speak, swung into action on that Friday morning, February
23 22, and as of that Monday morning meeting we had a very
24 brief list of certain names of parties that had sold stock
25 the previous Friday.

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1 We read off, I believe I read off the names that I
2 had to see if the company or the representatives there at that
3 meeting recognized any of the names, any association in con-
4 nection with the company.
5

6 Of course we were trying to see if there was any
7 inside trading at that point. To see if there was any
8 recognition of either the brokerage firms or the parties.
9

10 I believe the Wachovia Bank was one of the few on
11 the list. I think that transaction went through Loeb Rhoades.

12 When we mentioned Loeb Rhoades somewhere along the
13 line the company said, yes, Mr. Barbanell who was at the
14 meeting on the Thursday was a partner in that firm, and at
15 that point we asked the company, after reading all the names
16 going over some of the names on that list, that they go back
17 and ask the people not at the meeting, George Neuwirth and
18 others connected with the company, whether they recognized
19 any of these people. I think that at that point we had
20 the Alper's name, the fact that they had traded, whether
21 they recognized the name, whether there was any connection,
22 and so on and so forth, and to see what if anything Mr.
23 Barbanell knew or told anyone relative to the meeting
24 developments that previous Thursday.
25

Q Isn't it a fact, Mr. Shukovsky, that you were told
at that meeting by Geon's counsel that after trading had

1
2 been halted it was first learned that Mr. Barbanell had told
3 people about the meeting? Do you recall that?

4 A No, I don't. I recall that there was discussion
5 whether or not -- whether people knew in the street that there
6 was going to be a meeting of the board of directors of Geon
7 the prior Thursday to sign the contract, or whether that was
8 not general information. I don't recall whether the state-
9 ment that you made is accurate.

10 Q Mr. Shukovsky, the American Stock Exchange at some
11 point asked Mr. Rauch to come down and talk about his con-
12 nection with Geon sales; is that correct, sir?

13 A That's correct.

14 Q And he came down and made a statement to the American
15 Stock Exchange?

16 A That's correct.

17 Q And at the first such occasion, Mr. Shukovsky, were
18 you present?

19 A I'm not certain of the date, but I believe it may
20 have been Wednesday --

21 THE COURT: The question is, whether you were present.

22 THE WITNESS: Well, your Honor, I'm trying to answer
23 the question. I was present during part of it, but I was --
24 I was present during part of his testimony and I was trying
25 to place it in the proper context.

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2 Q Well, perhaps I can ask you this: Do you recall if
3 you were present at the very first testimony he gave?

4 A Well, I was present of the very first
5 testimony that he gave.

6 Q I see.

7 A I was not there at the beginning. I was not there at
8 the end. I was there during the middle.

9 Q Did the American Stock Exchange receive any informa-
10 tion that the statements Mr. Rauch had made in his first
11 session were not correct?

12 A Yes.

13 Q Where did that information come from, Mr. Shukovsky?

14 A Mr. Rauch, I believe, testified on Wednesday, the
15 27th of February. That afternoon while I was talking to
16 Ed Peterson about this matter we had had meetings all day and
17 discussions all day about the situation, the problem. I was
18 talking with Mr. Peterson in his secretary's alcove and he
19 received a phone call from Geon. I believe I took notes at
20 the time, I forget exactly who was on the other end, but I
21 believe it was Joe Connolly, Jack Friedman and Saul Kronoveth,
22 they are all partners in Kaye Schoeler.

23 Q And these people told somebody at the American Stock
24 Exchange, did they not, that they had interviewed Mr. McMahon
25 and Mr. McMahon had told them that Mr. Rauch had asked that

the Exchange were complete fabrications. And I said, in what respect is it a fabrication? They said, we cannot tell you that at this time, but they are totally untrue.

I believe at that point in time that is all that was said was that it was a complete fabrication.

THE COURT: Who said that?

THE WITNESS: I believe it was Jack Friedman.

THE COURT: Friedman said that?

THE WITNESS: Right.

Q Are you aware of the later conversation, Mr. Shukovsky, during which one of the attorneys from Kaye Schoeler told, I believe, Mr. Walker at the American Stock Exchange, that Mr. McMahon had been interviewed and voluntarily come forward, Mr. McMahon voluntarily came forward to Mr. Neuwirth and told him the true set of facts?

A Well, no. I don't have that recollection.

MR. STRUM: I have no further questions, your Honor.

THE COURT: All right. Do you have any questions, Mr. Gordon?

MR. GORDON: Yes, your Honor.

xxx 23 CROSS-EXAMINATION

24 BY MR. GORDON:

25 Q Mr. Shukovsky, you stated that Ivan Boesky's name

he participate in cooking up a story?

A No, that's not correct. They spoke to me, and what they said was that -- I think it would be helpful to this matter if I could perhaps relate the chronology of events.

Q By all means.

A What happened was the reason I went downstairs during the Rauch testimony was because we had a meeting scheduled later on that morning at 11 o'clock, I believe, with representatives of Geon. A meeting with officials of the Exchange relative to curing the problem that existed.

We wanted to know what Rauch's statements were and the reasons for his trading activity were, and that had some significance to our later meeting.

Thereupon I walked downstairs and I walked into the testimony, and I appeared on the record, but I didn't ask any questions. I heard Mr. Rauch give his testimony relative to not having any direct conversation with Mr. McMahon, that he had spoken to Mr. Maione, I believe, and some other statements saying that he had no direct information.

I was there a very brief period of time. I walked out and went to the other meeting.

Later that afternoon I did get this phone call, as I said, when I was with Mr. Peterson and the representatives of Geon told me at that point that Rauch's statements to

came up, and you think it came up at a conversation at the American Stock Exchange; is that correct?

A Yes, sir.

Q Do you recall whether that came up at the same time that Mr. Royce's name came up?

A Yes, I do, sir.

Q Do you recall whether it was Mr. Friedman who brought both names up at the conversation?

A No, I do not. I don't know who brought up each of the names.

Q Do you know the context in which Mr. Boesky's name was mentioned in this discussion?

A Well, the context is, I believe, what I testified earlier relative to people interested in the Geon-Burmah transaction. People call in the company to find out developments and annoying, people in the class of people annoying the company relative to the developments.

Q Do you recall specifically Mr. Friedman saying that Ivan Boesky had been annoying the company?

A No, I didn't say that. I said in the class of people calling the company annoying.

Q Mr. Shukovsky, do you recall whether Mr. Friedman compared the nature of Mr. Boesky's calls with the nature of Mr. Royce's calls and said that Mr. Boesky's calls were in

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2 his opinion completely proper?

3 A No, I do not.

4 MR. GORDON: No further questions.

5 THE COURT: All right. Are there any further
6 questions?

7 MR. DRAKE: No, your Honor.

8 THE COURT: All right. Thank you, you are
9 excused.

10 (Witness excused.)

11 MR. DRAKE: The plaintiff will call Mr. Barbanell.

12
13 R O B E R T B A R B A N E L L, called as a witness
14 in behalf of the plaintiff, being first duly sworn by
15 the clerk of the Court, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. DRAKE:

18 Q State your name, please, sir?

19 A Robert Barbanell.

20 Q What is your address, Mr. Barbanell?

21 A Home address?

22 Q Yes, sir.

23 A Three Mitchell Place, New York.

24 Q Where are you employed, Mr. Barbanell?

25 A At Loeb Rhoades and Company. I'm a partner in Loeb

Rhoades and Company.

Q In what capacity, sir, are you employed at Loeb Rhoades?

A I'm a partner in the firm.

Q What do you do? What are your functions?

A In the corporate finance department, which is the investment banking department of Loeb Rhoades.

Q Are you a director of Geon Industries?

A Yes, I am.

Q How long have you been a director of Geon, sir?

A Approximately 2 years.

Q Are you a shareholder of Geon?

A Yes.

Q How many shares of Geon do you presently own, sir?

A Two hundred and fifty.

Q When did you purchase those shares, sir?

THE COURT: I can't hear you. You asked when he bought the 250 shares?

A About June or July of 1972, just before I became a director.

Q Are these the only shares you have ever owned of Geon, sir?

A Yes.

Q Were you notified, sir, on or about February 15,

1974 of a board of directors meeting of Geon?

A There was a directors meeting on February 21.

THE COURT: He is asking whether you got a notice of that.

A As I recall, it was a telephone call.

Q Did you subsequently receive any written notice?

A I don't remember.

Q Do you recall receiving a copy of the proposed purchase contract, anything to do with Burmah?

A Yes, sir.

Q When did you receive that?

A Sometime prior to that. Sometime prior to the 15th, I believe. I would say the end of January, the first few days in February.

Q When were you first told about the discussions with Burmah?

A At the end of November.

Q November of 1973?

A Yes.

Q Who told you that, sir?

A Peter Neuwirth.

Q Was it at a board meeting?

A No.

Q Where was it, sir?

1
2 A At dinner. He and I had dinner one night.

3 Q Was this prior to December 3, 1973?

4 A Yes.

5 Q What did Mr. Neuwirth tell you, sir?

6 A We had in discussing a variety of matters concerning
7 Geon, and he related to me the, as I recall it, these dis-
8 cussions with Burmah had been going on for sometime, and he
9 was of the mind that they were now serious and that he anti-
10 cipated that Geon would get a proposal from Burmah to acquire
11 Geon.

12 Q What is the earliest that conversation could have
13 been, sir? Do you recall?

14 MR. STRUM: I object to the question, your Honor.

15 THE COURT: Yes. Well, that's right, it isn't a
16 question whether the -- you think this might have happened,
17 when, in the fall of 1973?

18 THE WITNESS: I looked it up, sir, I can't remember
19 the exact date. I think it was the last week of November.

20 THE COURT: Last week of November. All right.

21 BY MR. DRAKE:

22 Q Would you say it was sometime before or after
23 Thanksgiving?

24 A It was right around Thanksgiving. I could go back
25 to my date book and give you a precise date, but I think it

was the last week in November.

Q All right, sir.

Let me direct your attention, sir, to the events of February 21, 1974.

Did you go to the board of directors meeting that day?

A Yes, I did.

Q Where was it held, sir?

A At the offices of Kaye Schoeler Fierman Hays and Handler, 56th and Park.

Q Did you know the purpose of that board meeting prior to your going there, sir?

A Yes.

THE COURT: You said you received a copy of the proposed contract, as I understand it.

THE WITNESS: Yes, sir.

THE COURT: And you knew that was the subject matter of the meeting, I take it?

THE WITNESS: That is correct. I had previously talked to a number of the lawyers at Kaye Schoeler and given them comments on the purchase contract and questions that I had had over the course of the previous month.

THE COURT: In other words, you reviewed the previous draft of the contract so you had a running acquaintance

with the negotiation.

THE WITNESS: Yes, sir.

THE COURT: As far as the lawyers were concerned?

THE WITNESS: Yes, sir.

THE COURT: All right.

BY MR. DRAKE:

Q What was your understanding as to the purpose of that meeting, sir?

A It was to formally ratify that contract. To authorize the management to execute the contract.

Q What time did you arrive at that meeting, sir?

A I got there a little late. About 20 minutes to four. The meeting was called for 3:30.

Q Did you go into the board room?

A Yes.

Q What was going on in the board room, sir?

A Well, there was a discussion going on. As soon as I walked in the room somebody said, we have a problem.

Q Do you recall who said that?

A No.

Q Was it a somber atmosphere in that room, sir?

A I couldn't characterize it.

Q All right, sir. What did you say in response to that?

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2 A "What is it?"

3 Q What did they tell you?

4 A Well, I can't quote it for you, but the substance
5 of the information I got was --

6 THE COURT: Do you remember who told you what the
7 problem was?

8 THE WITNESS: No, sir. I think it was one of the
9 officers of the company, but I can't recall precisely which.

10 THE COURT: You don't recall which one it was.

11 THE WITNESS: No, sir. My impression, frankly, if
12 I think about it now, is that there were several people
13 talking and different people related different aspects of
14 what the discussion was.

15 THE COURT: If it would have been an officer of the
16 company, it would have been, I suppose, one of the Messrs.
17 Neuwirth, or Mr. Bloom?

18 THE WITNESS: I would think so, if it had been one
19 of the officers. They were the only three officers there
20 that I recall.

21 BY MR. DRAKE:

22 Q All right, sir. What did they say?

23 A That immediately prior to their leaving their offices
24 to drive into New York, Long Island to come to the board
25 meeting, that they had been given some figures on the telephone.

1 They had been read a list of figures on the telephone which
2 came from various branch locations, warehouses, et cetera,
3 with respect to earnings, or operating earnings for the year
4 having ended December 31, 1973, and that at the first blush
5 addition of those numbers, or compilation of those numbers,
6 it appeared as though there might be an earnings shortfall
7 below that which they had previously estimated the year's
8 earnings to be.
9

10 That was the general substance of it.

11 Q Was there a discussion, sir, of this earnings short-
12 fall jeopardizing the Burmah deal?

13 THE COURT: Wait a minute. Let me ask this question:
14 You worked with the lawyers on this contract. Did the con-
15 tract have any statements about what the earnings of Geon
16 would be for 1973?

17 THE WITNESS: No, sir.

18 THE COURT: Nothing in the contract about that?

19 THE WITNESS: I don't remember anything like that.

20 THE COURT: You don't remember anything like that?

21 THE WITNESS: No, sir.

22 THE COURT: All right. So all that you say is that
23 the earnings were less than these officers thought they were
24 going to be.

25 THE WITNESS: That's all I knew at that precise

moment.

THE COURT: All right.

BY MR. DRAKE:

Q Was there any discussion, sir, whether or not this earnings shortfall would jeopardize the Burmah deal?

A Later on there were some questions and answers before that, and it developed in the course of those sentences that at some point in the discussions with Burmah the years estimates of earnings of around \$3,600,000 before taxes had been used and that figure had formed the basis for some of the discussions.

Q Was that now in jeopardy if this earnings shortfall proved out?

A You say was the figure in jeopardy?

Q The three million six that you mentioned, sir.

MR. STRUM: I object to the question, your Honor.

THE COURT: I don't know what the question means.

Q Well, how did the discussion of the three million six come up, sir?

THE COURT: Well, I think he just testified that the -- you understood that the negotiations were based, I think it was on \$36,000,000, is that right, the price?

THE WITNESS: Yes.

THE COURT: And that there was talk about the earn-

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2 ings for 1973 would be three million six?

3 THE WITNESS: Before taxes.

61 4 THE COURT: Before taxes, so it would make it ten
5 times earnings, that was probably the deal, wasn't it?

6 THE WITNESS: No, not precisely, sir, as I under-
7 stood. First of all I knew about the three, area of three
8 million six, because I was a director and I had had discus-
9 sions with the officers over the year, and I had some idea
10 of what the company was expecting that it would earn. And
11 the three million six, and I can't recall this precisely,
12 the company pays less than 50 percent taxes because of
13 certain technical factors, and that the deal was in the
14 area, the price would be in the area of 17 to 18 times after
15 taxes.

16 THE COURT: After taxes.

17 THE WITNESS: Earnings.

18 THE COURT: All right.

19 THE WITNESS: That was my understanding of the
20 substance of the transaction.

21 BY MR. DRAKE:

22 Q What I am trying to determine, sir, was there any
23 discussion of the impact of these figures that were presented
24 to the board that day on this --

25 A Well, first discussion, or a number of statements

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made, people asked questions, I asked questions as to when they said they had preliminary figures, what did that mean, where did they get them, what had they done about them. Statements were made by each of the officers in the room at different times and in different words.

The substance of which was they believed that the first preliminary figures they had could not possibly be correct.

THE COURT: Yes, but I don't think that is what he is asking you. He understands all that. What he is really asking, did anybody say, jeepers, creepers, if what we made is the figures we have got here we won't be able to go through with the Burmah deal? Did anybody say that.

THE WITNESS: Not precisely that. I think there was a statement that obviously this would have to be discussed with Burmah and could have a material effect either on the ability to complete the Burmah deal or the price at which the deal could be done.

THE COURT: That is what he is asking you.

THE WITNESS: Yes, sir. My memory is that those issues were raised.

THE COURT: That was raised.

BY MR. DRAKE:

Q Was there any discussion at that meeting, Mr.

Barbanell, that someone should watch the market activity in Geon?

A Yes. Later on.

Q Tell me the gist of that discussion, sir.
How you remember it.

A Well, as I recall it that happened at the very end of the meeting, and, I don't know, I can't recall whether everybody participated in that, or just some people. I was under the impression that one of the Kaye Schoeler people, or somebody from the company, had some regular procedure which they had used on other occasions to keep track of the market prices of the stocks of companies in which they had some dealings, or interests or something. And that somebody would do that.

Q Somebody would do what, sir?

A Would the following morning try to keep himself informed as to current prices of the stock as it traded on the American Stock Exchange.

THE COURT: Do you remember who was supposed to do that?

THE WITNESS: My memory is it was one of the lawyers, sir.

THE COURT: One of the lawyers. All right.

Q What was the purpose of that, sir?

1
2 MR. STRUM: I object, your Honor. If he wants to
3 ask about conversations, I wouldn't object, but I object to
4 the question.

5 THE COURT: Well, I think after all, now, Mr.
6 Barbanell is in Loeb Rhoades, he probably has a view.

7 Why was that important, to watch the trading next
8 morning? Why did that make any difference.

9 THE WITNESS: It was felt, a number of people expressed
10 the view that if there was an unusual amount of activity,
11 or change in price that might mean that the failure of the
12 board to make an announcement that it had ratified the
13 contract would have had an effect on somebody's view of
14 whether the likelihood of the deal was still as strong as it
15 had been.

16 THE COURT: I suppose it would mean if there was
17 no announcement the next morning, they thought that possibly
18 people who were waiting for the great announcement would sell
19 their stock.

20 THE WITNESS: Correct.

21 THE COURT: So they wanted to see if that was going
22 to happen.

23 THE WITNESS: Correct.

24 THE COURT: All right.

25 Q Who knew about the board meetings to ratify -- who

1 knew to your knowledge of the board meeting to ratify the
2
3 Burmah deal?

4 A My impression is that various of the arbitrageurs
5 in the street that the board meeting was to take place.

6 THE COURT: How would they know? Was there anything
7 on what they called the board tape about --

8 THE WITNESS: I don't know how they knew, sir.

9 THE COURT: You just felt they probably did know?

10 THE WITNESS: No. I knew as a fact that some of
11 them did, because I had had some conversations with some.

12 THE COURT: All right.

13 Q Did you tell any of them that the board meeting was
14 going to take place?

15 A I don't recall that I did.

16 Q Do you recall a conversation with Mr. Ivan Boesky
17 of Edwards and Hanley?

18 A When? At sometime prior to the board --

19 Q Prior to the board meeting?

20 A Yes, I did talk to him.

21 Q Did you tell him about the board meeting?

22 A I do not recall that I did.

23 Q Tell us about that conversation, sir?

24 A Well, I'm not sure that I can tell you specifically
25 about that conversation. In the course of the previous

1 month I had ~~conversations~~ with a half dozen or so arbitrageurs
2 in the street who called me from time to time to inquire as
3 to various matters that might be involved in the proposed
4 Burmah acquisition.
5

6 Those conversations, in my mind now, are all molded
7 and I can't distinguish for you specifically what one said
8 as opposed to what one of the others said, or what I may
9 have said as opposed to the other.

10 Q Returning to the board meeting and the conversation
11 concerning watching the market activity, did anyone suggest
12 that the market should be watched to see if it dropped below
13 a particular level, and if it did the Amex should be called.

14 A No, sir.

15 Q It was not discussed?

16 A The part you are asking about, if the stock got
17 below a certain level somebody should call the American
18 Stock Exchange? I do not recall such a point being made.

19 THE COURT: Well, I think I am more interested in
20 as to whether anybody said in the course of the meeting when
21 it was decided they weren't going to ratify the contract,
22 that they had been do ~~some~~ more work on the figures, did
23 anybody suggest that maybe the Stock Exchange ought to be
24 told that, the American Stock Exchange? Do you remember?

25 THE WITNESS: No, sir, I don't remember that.

1 There was discussion of whether the company ought to make
2 some announcement or some such. I don't remember anybody
3 saying, suggesting that we talk to the American Stock Exchange
4 specifically.
5

6 Q When that suggestion was made that maybe there ought
7 to be an announcement, did you bring up the fact that you
8 knew that certain arbitrageurs were aware of the board meet-
9 ing that day and that they might draw an adverse inference
10 from that.

11 THE COURT: Well, that isn't a question, it's a long
12 winded statement. I don't think I am going to let you ask
13 that question.

14 The point I think you are asking about is well
15 taken. Was the subject discussed if there was no action on
16 that day that perhaps it would be a good thing to put out a
17 press release because if you didn't put out a press release
18 some of these people who thought they were in the know would
19 sell and it would cause the market to go down? Was that
20 discussed?

21 THE WITNESS: Your Honor, I think I would answer the
22 question this way: It was discussed at times, there were
23 people who knew there was a board meeting and that if there
24 were no announcements coming out of that board meeting
25 that might have a marked effect.

1 THE COURT: And that was in connection with the
2 desirability perhaps of issuing a press statement?

3 THE WITNESS: Of issuing an announcement, yes, sir.

4 THE COURT: Or an announcement. All right.

5 MR. DRAKE: I have no further questions of this
6 witness, your Honor.

7 THE COURT: All right. Mr. Strum.

8 CROSS-EXAMINATION

9 BY MR. STRUM:

10 Q Mr. Barbanell, you testified that you did not tell
11 any arbitrageurs in advance of the meeting that there was
12 going to be a meeting; is that correct, sir?

13 THE COURT: I don't know that he quite said that.
14 He said he couldn't recall. He said he talked with some of
15 these arbitrageurs, and he didn't say that flatly. I think
16 you said you couldn't really recall whether you might have
17 mentioned it to any of them; is that correct?

18 THE WITNESS: That's correct.

19 Q On Friday, February 22, Mr. Barbanell, didn't you
20 tell Mr. Louis Korman that in fact you had told six or seven
21 arbitrageurs in advance of the meeting that there would be a
22 meeting?

23 A I don't recall that.

24 Q You don't recall that. Do you recall Mr. Korman
25

1 telling you on Monday, February 25, that he had told the
2 American Stock Exchange what you had said about telling
3 arbitrageurs?
4

5 A No, sir.

6 Q Do you recall saying to Mr. Korman, thanks for
7 volunteering that?

8 A No.

9 Q Did there come a time, Mr. Barbanell, when the SEC
10 requested you to give testimony in a private investigation
11 involving Geon?

12 A Yes.

13 Q Did you go down to the SEC to give testimony?

14 A Yes.

15 Q Were you accompanied by counsel?

16 A Yes.

17 Q By whom were you accompanied?

18 A By Mr. Alvin Hellerstein who is a partner in Stroock
19 and Stroock and Lavan.

20 Q They are counsel to Loeb Rhoades, are they not?

21 A Correct.

22 Q You were not accompanied by any counsel to Geon,
23 were you, Mr. Barbanell?

24 A No, sir.

25 Q On that occasion when you went down to the SEC was

there a stenographic reporter present?

A Yes.

Q Was a transcript of your testimony taken?

A I don't precisely know how to answer the question.

Q Well, why don't you tell me what happened.

A There was a young lady there, along with three or four lawyers, SEC lawyers, and she had what she told me was a tape recording device and a mask that she was going to talk into, and they were going to record my testimony. After 10 or 15 minutes of questioning, which I didn't understand, something came up, one of the lawyers asked the young lady to read the tape back, and when she went to do so it was blank.

Q So that the net result was there just wasn't a transcript?

THE COURT: Well, there might have been, but the question is whether you know whether there was a transcript taken of this.

A I never saw one.

Q You have never seen such a transcript?

A That's correct.

Q Did there come a time, Mr. Barbanell, when the Securities and Exchange Commission asked you to execute an affidavit concerning the events of the February 21 board

meeting?

A Yes.

Q And you executed such an affidavit, did you not?

A Correct.

Q And the subject of that affidavit is the February 21 board meeting; is that correct?

A Essentially, yes.

Q Essentially. Prior to your submission of that affidavit, to the Securities and Exchange Commission did you show it to any other officer or director of Geon?

A No.

Q After you submitted it to the Securities and Exchange Commission, did you send any copies of that affidavit to any officer or director of Geon?

A I did not.

Q Or counsel to Geon?

A My counsel had a copy, Mr. Strum. I don't know whether -- I did not send any copy to him.

Q You did not. I am not restricting my questions to you, Mr. Barbanell.

A I am sorry. I did not.

Q Prior to your submission of this affidavit to the Securities and Exchange Commission, Mr. Barbanell, did you discuss with any of your partners at Loeb Rhoades, or any

1 of your associates at Loeb Rhoades, did you discuss the
2 possibility of an SEC suit against Loeb Rhoades in connection
3 with the Geon stock?
4

5 MR. DRAKE: Your Honor, I object --

6 THE COURT: Well, I think if he has any recollection
7 that he discussed it with his partners --

8 MR. DRAKE: I just don't see the relevance, your
9 Honor.

10 THE COURT: I will let him answer it if he remembers
11 ever having discussed it. I suppose down at Loeb Rhoades when
12 you get hailed down to the SEC you always worry about the SEC
13 coming up with some proceeding, don't you?

14 THE WITNESS: If we have some reason to think they --

15 THE COURT: You always worry about that.

16 The question he is asking is whether when you sent
17 down this affidavit, whether you talked to any of your
18 friends at Loeb Rhoades about the possibility of the SEC
19 bringing a proceeding against you.

20 Do you remember doing that?

21 MR. STRUM: Your Honor, my question is before the
22 submission of the affidavit.

23 THE COURT: Oh, before you filed it. All right.
24 That's fair enough. Before you filed the affidavit.

25 THE WITNESS: Well, I recall that one of my partners

1 saw -- I showed it to ~~one~~ of my partners. I can recall
2 discussing specifically a suit against Loeb Rhoades.
3

4 BY MR. STRUM:

5 Q You showed it to one of your partners, but you
6 never showed it to anyone at Geon, did you?

7 THE COURT: He said that. What's the difference?
8 He already said that. You didn't say anything to any of your
9 partners, gee, with this affidavit that will take the SEC
10 off our backs, did you?

11 THE WITNESS: No, sir.

12 THE COURT: All right.

13 Q Did Loeb Rhoades sell any Geon stock on Friday,
14 February 22, Mr. Barbanell?

15 A I believe we did. Excuse me, when you say Loeb
16 Rhoades, as agent. As a broker.

17 Q Yes. I am sorry. You said you think they did.

18 A Correct.

19 Q Do you know how many shares Loeb Rhoades as agents
20 sold on February 22?

21 A No. Not really.

22 Q Do you know the names of any accounts for which
23 Loeb Rhoades sold on Friday, February 22?

24 A No.

25 Q Are you familiar with an account of the Wachovia

Bank? Is that a Loeb Rhoades account?

A Wachovia Bank is a major bank. I think we do business with them. I think they do business with many, many firms on the street.

Q Are you aware of any sales on Friday, February 22, of Geon by the Wachovia Bank?

A Well, what was the first word of your question?

Q Were you aware?

A No, I was not.

Q Are you aware now?

A Yes.

Q You know that such sales did take place on Friday, February 22?

A Correct.

THE COURT: That is John Hines' bank down in South Carolina?

THE WITNESS: I don't know who runs the bank. No, it's in North Carolina.

THE COURT: Winston-Salem, or some place?

THE WITNESS: I think it's the largest bank in North Carolina, and it's headquarters, I'm not sure --

THE COURT: John Hines used to run it years ago. I don't know if he does any more.

Q Does Loeb Rhoades have an account with First

1 National Bank of Denver?

2 A I believe we do business with First National Bank
3 of Denver.
4

5 Q Did they sell Geon stock on Friday, February 22?

6 A They may have.

7 Q You don't know.

8 A I am not really familiar with that.

9 Q Are these two accounts that I have mentioned, the
10 Wachovia Bank and the First National Bank of Denver, are they
11 serviced by a Mr. Mario Gabelli?

12 A I wouldn't think so. Mr. Gabelli is a research
13 analyst with Loeb Rhoades. I would think those accounts
14 would be serviced by a salesman, or one of our institutional
15 representatives.

16 Q Do you know, Mr. Barbanell?

17 THE COURT: Do you know what?

18 Q Whether these accounts are or are not serviced by
19 Mr. Gabelli?

20 THE COURT: His impression is they are not because
21 he says he isn't in that line of business. But, do you have
22 any knowledge one way or the other as to who handles these
23 two accounts at Loeb Rhoades?

24 THE WITNESS: I wouldn't know who handled the
25 Wachovia Bank. No. I don't know which salesman handles

those accounts.

Q Is Mr. Gabelli the Loeb Rhoades analyst who concerns himself with Geon?

A Correct.

Q Prior to the February 21 board meeting, Mr. Barbanell, did you tell Mr. Gabelli there was going to be such a meeting?

A Not that I recall.

Q Mr. Barbanell, directing your attention to the board meeting of February 21, you say that there was some discussion about knowledge on the part of some people that there was going to be a board meeting. Was there such a discussion?

A Yes.

Q Would you tell me what was said and who said it on that subject.

A My recollection is that a number of people in the room, and there were people in the room other than the directors, indicated that they were aware, including myself, that they were aware that other people knew that there was a board meeting.

Q Well, who made such a statement, Mr. Barbanell?

A Well, I believe that George Neuwirth did, I did. I believe one of the lawyers did. I would say three or four

1 people in my recollection indicated that they were aware that
2 other people knew that the board meeting was to take place.

3 Q What did you say on that subject?

4 A That I also knew that.

5 Q I beg your pardon?

6 A That I also was aware that some people knew of the
7 board meeting.

8 Q Is that all you said, that I'm aware that some
9 people are aware of the board meeting?

10 A No. And I said that I felt that if there was not
11 some announcement forthcoming out of the board that those
12 people who knew would normally expect an announcement of
13 some kind to come out of the board meeting. Presumably the
14 announcement that the contract had been ratified. And that
15 if that announcement, or some similar announcement were not
16 forthcoming, that might have an effect on the market.

17 Q Did you consider that a significant discussion at
18 that board meeting, one of the important things?

19 A I wouldn't know how to characterize it. It was one
20 of the subjects that came up, my memory is at the very end
21 of the meeting.

22 THE COURT: We will take a five minute recess,
23 gentlemen.

24 (Recess.)
25

MR. STRUM: May I have this marked as an exhibit, please.

XXX

(Defendant Geon Exhibit C marked for identification.)

BY MR. STRUM:

Q Mr. Barbanell, did you, after the meeting of February 21, get a copy of the minutes of that meeting?

A I can't specifically recall, but I presume I did. I usually do.

Q Do you know who ordinarily prepares the minutes of board meetings?

A No.

Q Who physically writes them up?

A No.

Q You don't know?

THE COURT: Who is the secretary of Geon?

THE WITNESS: I don't really recall.

THE COURT: You don't recall.

MR. STRUM: Your Honor, the secretary is Mr. Bloom.

THE COURT: Thank you.

Q I show you what has been marked Exhibit C for identification, Mr. Barbanell, and I ask you if you have seen that before (handing)?

A Mr. Strum, there have been a lot of meetings. I can't specifically recall whether I have seen this one before

2 or not. I presume I have.

3 THE COURT: The only question is, do you remember
4 seeing those before?

5 THE WITNESS: I can't specifically recall.

6 THE COURT: All right.

7 Q Mr. Barbanell, can you recall any instance in the
8 last year of your attending a board meeting and then not
9 getting the minutes?

10 A I do not.

11 MR. STRUM: Your Honor, I offer these minutes in
12 evidence.

13 MR. DRAKE: May I see those.

14 MR. STRUM: Sorry (handing).

15 THE COURT: Why don't you go on with your question,
16 and Mr. Drake will look at it and you will agree or not.

17 MR. STRUM: Your Honor, I would like to use it for
18 my next question, if I may.

19 MR. DRAKE: Your Honor, the only problem I have with
20 these, they are signed by Mr. Bloom and it is my understanding
21 that Mr. Bloom didn't prepare these.

22 THE COURT: Well, that doesn't matter. All he is
23 offering these as is the minutes of that meeting. I don't
24 know who prepared them, but this gentleman doesn't know
25 whether they are the minutes or not. He doesn't recall having

seen them.

MR. DRAKE: I don't object that that is what they say.

THE COURT: All right. I will receive it.

(Defendant Geon Exhibit C received in evidence.)

MR. STRUM: I represent, your Honor, that these are the minutes of the meeting of February 21.

THE COURT: You ought to know. All right.

BY MR. STRUM:

Q Mr. Barbanell, in the minutes of that meeting of February 21 is there any mention of a discussion concerning knowledge by people in advance of the meeting?

THE COURT: Well, why do you ask him that? He doesn't know about these minutes, and why would it be in the minutes? I don't really see the point of that question. There is no use having him go through all these minutes. If there is, I can read that, and if there isn't, there isn't. Never mind that, sir. Don't go through there.

Q Mr. Barbanell, did you go down to the American Stock Exchange on April 11, 1974 and give statements to the American Stock Exchange with regard to the Board meeting of February 21?

A I don't recall the exact date, but I did meet with the American Stock Exchange.

Q Do you recall being asked these questions and giving these answers, at page 50:

"Q Did any of these arbitrageurs know about when to expect Geon's board to meet to ratify it?

"A My impression is, yes.

"Q Do you know how they learned.

"A I do not."

Do you recall being asked those questions and giving those answers?

A I do.

Q Did I understand you to say earlier that one or more persons at the Geon board meeting on Thursday, February 21, stated that they had called arbitrageurs?

A I did not say that.

Q You did not say that?

A I don't -- I didn't intend to. I don't believe I said that.

MR. STRUM: Your Honor, I have no further questions.

THE COURT: Mr. Gordon.

CROSS-EXAMINATION

BY MR. GORDON:

Q Mr. Barbanell, since the commission singled out the name of Ivan Boesky for mention, is it correct that the conversation or conversations you had with Ivan Boesky with

respect to Geon were similar in form and content to the conversations that you had with all of the other arbitrageurs with whom you spoke?

MR. DRAKE: Your Honor, I am not sure I understand that question.

THE COURT: I don't know if he understands the question. I think all that means is, you said you talked to this fellow Boesky at some point.

THE WITNESS: Yes.

THE COURT: Do you remember what you said to him?

THE WITNESS: No, sir. As I say, I think I said--

THE COURT: You had enough of them. You don't remember what you said to Boesky or these other fellows who called you? Do you remember what you said to them?

THE WITNESS: No. They usually asked questions.

THE COURT: Do you think they asked the same questions or different questions? I think all he is trying to find out --

THE WITNESS: Some of the same questions and some different questions, and some of the questions in different ways.

THE COURT: I think what he is trying to find out is whether you told Mr. Boesky anything you didn't tell the others, if you remember.

MR. GORDON: That's right, your Honor.

THE WITNESS: I can't recall.

THE COURT: You can't retell. All right.

MR. GORDON: Thank you. No further questions.

THE COURT: Are there any further questions?

MR. DRAKE: No further questions, your Honor.

THE COURT: Thank you, Mr. Barbanell, you are
excused.

(Witness excused.)

MR. DRAKE: Plaintiff calls Mr. Jack Friedman.

J O H N A . F R I E D M A N, called as a witness on
behalf of the plaintiff, being first duly sworn by the
clerk of the Court testified as follows:

DIRECT EXAMINATION

BY MR. DRAKE:

Q State your name, please, sir?

A John A. Friedman.

Q Where are you employed, Mr. Friedman?

A I'm a member of the firm of Kaye Schoeler Fierman
Hayes and Handler.

Q Are you an attorney at law, sir?

A Yes, I am.

Q Has your firm been retained in the past to represent

Geon Industries, sir?

A Yes, it has.

Q Have you ever owned any shares of stock of Geon Industries, sir?

A Yes, I have.

Q How many shares, sir.

A At this time I believe I own 150 shares. I purchased 300 shares of the original public offering, disposed of some of them in 1971, and 200 of them in 1971 and the remaining hundred shares, there was a three for two stock split, in April of 1972, and that accounts for the 150 shares I hold.

Q Does the firm of Kaye Schoeler own any shares of Geon, sir?

A I believe the firm does hold someshares.

Q Well, how many shares, sir?

A I don't know.

Q Could you give me an approximation? A thousand? Two thousand? Six thousand?

A It would be a speculation, but I think 5 or 6 thousand sounds about right.

Q Mr. Friedman, I would like to direct your attention, sir, to the morning of February 22, 1974.

Did you receive a phone call that morning, sir, from Mr. Frank Bloom?

1 A Yes, I did.

2 Q What time was that phone call, sir?

3 A I spoke with Mr. Bloom first on that morning at
4 about 9:30.

5 Q 9:30?

6 A That's my recollection.

7 Q Mr. Bloom called you?,

8 A I believe he did call me, but it is possible, that
9 I could have called him. Or I could have returned his phone
10 call.

11 Q Could you tell us the substance of that conversa-
12 tion, sir?

13 A Our discussion centered on what Mr. Bloom had
14 learned, if anything, in his work since leaving the board
15 meeting on the previous day.

16 Q Did he indicate that he had learned anything dif-
17 ferent from what he knew the night before?

18 A Well, he confirmed to me that as we had suspected
19 the elimination entry amounts to something on the order of
20 \$300,000 had in fact been done wrong, and he said that he
21 had been able to check footings and some arithmetic calcula-
22 tions, and had found nothing from these, but really was not
23 very far advanced from where he had been when we left the
24 meeting the day before.
25

1 I asked him, I think the conversation ended, and I
2 asked him to let me know as soon as he had learned anything
3 of any kind.
4

5 Q You say Mr. Bloom confirmed to you that there was
6 a \$314,000 reversible item that he was now sure of? Exactly
7 what --

8 THE COURT: No. No, he didn't say that. He said
9 he confirmed that there was a 310, I think he said, we talked
10 about it being a 311 error, in the accounts which we have
11 heard a lot of testimony about. That is what he told you.
12 He confirmed there was that error. Is that right?

13 THE WITNESS: That's correct.

14 THE COURT: All right.

15 Q How long did this first conversation last?

16 A I would say about five minutes.

17 Q What else was discussed during those five minutes,
18 sir?

19 A I don't recall anything else being discussed.

20 Q Prior to Mr. Bloom's phone conversation did you have
21 a phone conversation with anyone else that morning concerning
22 Geon?

23 A Telephone conversation prior to that?

24 Q Yes, sir.

25 A No, sir.

Q Do you recall testifying before the Securities and Exchange Commission, Mr. Friedman?

A I do recall.

Q I would like to call your attention to page 53 of your testimony of that day, sir, line 9.

"Q Did you receive a phone call from anyone at Geon on the morning of the 22nd?

"A Yes, I did.

"Q What time was the phone call?

"A About 9:30 give or take five minutes.

"Q Between 9:15 and 9:30 were you involved with any problems relating to Geon's trading?

"A No, at that time my telephone conversation was with Frank Bloom. I don't recall whether I called him or he called me.

"Q Did you have any conversations prior to talking with Mr. Bloom?

"A No, not that I recall.

"Q So you don't recall whether Mr. Bloom called you or you called Mr. Bloom?

"A No. We spoke, and the topic of that conversation was what if anything he had learned in the work that he had been doing on Thursday night. He had gone back after the board meeting to get back to work on the figures and see what

1 he could discover, and the substance of the conversation was
2 he didn't know anything more than he had the day before as of
3 that moment, but that he would keep me posted.

4 "Q This was the phone call at 9:30?

5 "A Yes, it was."

6 Now, you don't mention there, sir, about Mr. Bloom
7 telling you about the \$311,000 figure.

8 MR. STRUM: I object to counsel's statement rather
9 than a question to Mr. Friedman.

10 THE COURT: Well, I can't get very excited about it,
11 but in the testimony before the SEC, according to what he
12 reads, sir, he didn't mention the \$311,000 and you mentioned
13 this afternoon that he found out that was a mistake all right,
14 a mistake that they had made.

15 THE WITNESS: Am I to answer your question?

16 THE COURT: Yes. Why didn't you tell the SEC that?

17 THE WITNES: I had been under the understanding
18 on the previous afternoon and evening at the board meeting
19 that in fact that entry had been improperly booked, and that
20 what Frank was --

21 THE COURT: No, that isn't what he is asking you.
22 He is asking you why did you tell us about the \$311,000,
23 Bloom saying, yes, he found that was an error all right, and
24 you didn't tell the SEC that whenever it was that you testi-
25

1 fied before them. That's what he wants to know.

2
3 THE WITNESS: I am sorry, I was taking the long way
4 about it. But really, as I understood that conversation,
5 Frank really didn't know anything more in the morning sub-
6 stantially than he had known before, because I had been under
7 the understanding that he always believed that that was
8 wrong.

9 THE COURT: Yes, but you did say he confirmed it a
10 minute ago.

11 THE WITNESS: Yes.

12 THE COURT: But you just didn't think that was im-
13 portant at that time, you thought that was something which
14 developed the day before.

15 THE WITNESS: I don't think I had given it much
16 thought when I answered the question, Judge.

17 THE COURT: All right.

18 BY MR. DRAKE:

19 Q This was the 9:30 phone conversation. Is it your
20 testimony now, sir, that you are not sure whether Mr. Bloom
21 mentioned the three hundred --

22 THE COURT: No, please. No. He mentioned it all
23 right and confirmed it, and you want to know why he hadn't
24 told the SEC, and he was trying to explain that.

25 Let's go on with the next question.

MR. DRAKE: Your Honor, I am not sure that the record reflects whether or not he is testifying today that Mr. Bloom in the 9:30 conversation actually mentioned the \$300,000.

THE COURT: He did. He has testified to that, and the record will so show.

MR. DRAKE: Thank you, your Honor.

THE COURT: He has testified.

MR. DRAKE: All right, sir.

Q Did you talk to Mr. Bloom later that same morning?

A Yes, I did.

Q What time was that phone conversation, sir?

A It was about 10 o'clock. Perhaps five minutes after.

Q What did Mr. Bloom say in that phone conversation, sir?

A He said, Randy Gromet is calling on the other line, should I take the call? I said, you have to take the call. He said, what shall I tell Mr. Gromet? And I said to tell him, as we decided, that the company had no public announcement to make.

Q How long was that phone conversation with Mr. Bloom? Was that it? Was there anything else said?

A I may have said if there are any questions call me, or have Randy call me. I don't recall the exact words. That

1 conversation lasted about 30 seconds. As I testified at the
2 SEC, Mr. Drake, I had broken off in the middle of a trans-
3 Atlantic call to take that.
4

5 Q Did you know, Mr. Bloom didn't tell you why Mr.
6 Gromet was calling, did he sir?

7 A No, he didn't.

8 Q Mr. Bloom didn't tell you what Mr. Gromet wanted
9 because Mr. Bloom didn't know; is that correct, sir?

10 A That's right.

11 MR. STRUM: I object, your Honor.

12 Q So you broke off the phone, is this correct, sir?

13 THE COURT: He said he was in the middle of a trans-
14 Atlantic call and he said this lasted --

15 Q You went back to your trans-Atlantic call; is that
16 correct?

17 A That's correct.

18 Q What did you do then after you finished your trans-
19 Atlantic call?

20 A At that time I --

21 MR. STRUM: I object, your Honor.

22 THE COURT: Yes, that is going far afield. What
23 was the next thing you did with Geon?

24 Q Did you leave your office, sir? Did you go to a
25 meeting at about a few minutes after 10?

THE COURT: These questions throw me off completely.
I thought we were talking about Geon Industries --

Q Did Mr. Bloom call you back after he talked to Mr.
Gromet?

A Mr. Bloom called back my office. I did not speak to
him at that time.

Q How do you know he called back your office?

A Because Mr. Korman --

MR. STRUM: I object to the question, your Honor.

THE COURT: Well, I will let him answer the question.

MR. STRUM: If I may say so, your Honor, I think
perhaps we are now going to, through Mr. Drake's questions,
to try to solicit privileged material concerning --

THE COURT: Well, I don't know. If we do, you
holler. If we do, you holler. But what is your question
now?

MR. DRAKE: My question was, how does he know Mr.
Bloom called back his office?

THE COURT: There is nothing privileged about that.
Did you know Bloom called you back?

THE WITNESS: Yes, I did.

THE COURT: All right.

Q How did you know that, sir?

THE COURT: Hold it. What difference --

MR. DRAKE: Your Honor, he testified that he didn't receive the call.

THE COURT: Well, what difference does it make? Really, I think we are getting awfully petty. I am trying to get the point.

Go ahead with your next question.

Q Did you talk to Mr. Bloom after your conversation with him around 10 o'clock again that morning, between, say, 10 and 11?

A Not between 10 and 11, no.

Q Did Mr. Korman talk to Mr. Bloom?

A Yes, he did.

Q What time did Mr. Korman talk to Mr. Bloom?

THE COURT: If you know.

A I would put it about 20 minutes after, give or take a few minutes.

Q 20 minutes after 10?

A Yes.

Q What did Mr. Bloom tell Mr. Korman?

MR. STRUM: I object, your Honor.

THE COURT: What did Mr. Bloom tell Mr. Korman. Well, I don't know, I think perhaps you had better call Korman and ask him that.

Do you have any specific knowledge of what he told

2 Mr. Korman? Who is Mr. Korman? Is a partner of yours?

3 THE WITNESS: Mr. Korman is Mr. Strum's associate
4 in the gray suit.

5 MR. STRUM: Your Honor, this is Mr. Korman (indicat-
6 ing)

7 THE COURT: All right. That's fine. Do you know
8 what he told Mr. Korman?

9 THE WITNESS: Well, I know what Mr. Korman reported.

10 THE COURT: All right. What did Mr. Korman report to
11 you?

12 THE WITNESS: Mr. Korman reported that Mr. Bloom had
13 completed his call with Mr. Gromet, had told him that he
14 had no public announcement to make, and that he expected that
15 he would not have any public announcement at any time that
16 day.

17 I believe, and my recollection could be off here,
18 that Mr. Gornet, had said that, well, he had let the stock
19 open.

20 Q You say that phone call from Mr. Bloom to Mr.
21 Korman to your knowledge was about 10:20?

22 A Yes.

23 Q What time was it brought to your attention that
24 Mr. Bloom had talked to Mr. Korman?

25 A Well, I was sitting at my desk and Mr. Korman was

1 sitting at a chair in my office on my other telephone. We
2 had been together on the trans-Atlantic phone call, so that
3 he was there and, because we were rather busy, I left, at
4 some occasion I left him on the trans-Atlantic conversation
5 when I took Mr. Bloom's call -- excuse me, I don't recall
6 the question now.
7

8 Q When you finished talking to Mr. Bloom at 10 o'clock
9 did not leave your office and go somewhere else in Kaye
10 Schoeler to attend another meeting, sir?

11 MR. STRUM: I object, your Honor.

12 THE COURT: He can answer it, if he did. Did you?

13 THE WITNESS: At that particular time? Not immed-
14 iately, no.

15 THE COURT: All right.

16 Q A few minutes later; is that correct?

17 A Yes, a few minutes later.

18 Q You were in that meeting at about 10:40, 10:45
19 when Mr. Korman came in and got you out; is that correct,
20 sir?

21 A I think it was between 10:45 and 10:50.

22 Q All right. Between 10:45 and 10:50. Now, did Mr.
23 Korman then tell you that Mr. Bloom had called him at 10:20?

24 A No.

25 Q What did Mr. Korman tell you then, sir?

1 A Mr. Korman asked me to come back into my office.
2
3 He motioned me. And I can't recall which part of the office
4 I was in, it was one door away from mine. I can't remember
5 which part of the conversation took place in the three steps
6 between them, and which in that room, but someone in the
7 course of that, whether it was Mr. Korman or Mr. Connolly,
8 who was also present, said that the stock had dropped
9 sharply on big volume and said that the price was now, I
10 think 13 and seven eighths.

11 Q Who said that? I'm sorry, sir, didn't hear that.

12 A You asked me what Mr. Korman said, and I said I
13 think that was probably Mr. Korman, but in the space of that
14 time whether it was Mr. Korman or Mr. Connolly, I really
15 don't know.

16 Q That the stock had dropped?

17 A That's right.

18 THE COURT: Well, we have had all that.

19 MR. DRAKE: Your Honor, I didn't hear the witness,
20 I'm sorry.

21 THE COURT: All right. Ask the next question.

22 Q What did you do, sir, when he told you this?

23 MR. STRUM: I object, your Honor.

24 THE COURT: I will let him answer it. You heard the
25 stock dropped. What happened then?

THE WITNESS: Mr. Connolly called Mr. Maas at the American Stock Exchange to stop the trading of the stock.

THE COURT: Mr. Connolly did that. Were you present when he telephoned the Exchange.

THE WITNESS: Yes. He was in my office.

THE COURT: He was in your office, and he telephoned from your office the Exchange and told them to stop trading?

THE WITNESS: That's correct.

THE COURT: All right.

Q Who did you call at the American Stock Exchange?

A He called Mr. Bernard Maas.

Q Why did he call Mr. Bernard Maas?

THE COURT: He doesn't know why he called Mr. Bernard Maas, really.

THE WITNESS: I do, Judge.

THE COURT: Do you? Why?

THE WITNESS: I do, because I learned by experience in this from Mr. Connolly, and I have called the Exchange times whenever there was a problem in our firm that required immediate action at the Exchange, in my experience, which is relatively short, we call Bernie Maas.

THE COURT: All right.

Q Was there consideration giving to calling Randy Gromet?

1
2 A I don't recall that there was. I think the immed-
3 iate reaction when something had to be done fast was, as it
4 has been in the past, call Bernie Maas.

5 Q What did Mr. Connolly tell Mr. Maas?

6 THE COURT: He told him to stop trading I under-
7 stood.

8 A Yes.

9 Q Well, did he tell him why he should stop trading?
10 Or did he just call up and say, stop trading?

11 A Yes.

12 Q Just stop trading?

13 A Yes. He told him something besides that. He
14 reported as briefly as possible the information, the status
15 of the information which came out of the board meeting
16 yesterday, the status of its uncertainty, the fact that it
17 appeared that they were -- the stock was dropping precipit-
18 ously and in this situation that it appeared the proper
19 thing to stop trading, without knowing what in fact had
20 happened, that the trading ought to be stopped.

21 Q Did you receive a phone call back from the Amex
22 later that same morning?

23 A Yes, we did.

24 Q From whom, sir?

25 A Arthur Lee called.

1 Q Did Mr. Lee call you?

2 A I believe Mr. Lee called Mr. Connolly, but in my
3 office. We had all remained together. And I believe Mr.
4 Maas had indicated that Mr. Gerard would call us, and I
5 believe my secretary said Mr. Lee calling for Mr. Connolly
6 at Mr. Gerard's request.

7 Q What did Mr. Lee want?

8 A Mr. Lee wanted to know what we had told Mr. Maas,
9 and I participated in almost all of that conversation and
10 we repeated in substance the same thing that we had told Mr.
11 Maas. That the -- I can go through it if you like.

12 THE COURT: No, the same thing you just mentioned
13 a minute ago.

14 THE WITNESS: Exactly, sir.

15 THE COURT: All right.

16 Q Mr. Friedman, do you know how Mr. Connolly knew the
17 stock of Geon was declining in price?

18 A Yes.

19 Q How was that, sir?

20 A Directly because he had messages brought in by his
21 secretary who in turn had learned them from Mr. Larkin, Mr.
22 Connolly's son-in-law, who had been asked to call him when
23 anything happened with respect to Geon.

24 THE COURT: He was monitoring the market?

THE WITNESS: Yes.

Q Had Mr. Larkin been asked to monitor the stock, sir?

A Yes.

Q Do you know who asked him?

A Mr. Connolly.

Q Did Mr. Connolly tell you that he asked Mr. Larkin to monitor it?

THE COURT: Please, why are we going into this? This is so ridiculous. We have heard the evidence that Geon had somebody monitoring the market and they were monitoring it. So what?

Q Directing your attention to the board of directors meeting on the 21st, was there any discussion at that meeting, sir, whether someone should watch the stock?

A I don't believe that there was, any discussion at the meeting as such.

Q How did it come up?

A I had a conversation immediately at the end of the meeting, immediately following it, with Mr. Barbanell. I believe Mr. Bloom and Mr. Korman were within earshot. Whether they were participants or not I don't recall. We talked about, and my best recollection is that it was Mr. Barbanell who said, well, don't you think we ought to watch the market? And I would have said, yes, it's possible that

I said that, but I don't recall who said it.

Q Was there any discussion of a specific price mentioned at that meeting?

A I think that we were looking for what would constitute really untoured action in the market, and my best recollection is that I first asked Mr. Barbanell what he thought would be something that would indicate that something substantial was going on, and that as I recall it I said to him, well, the stock closed today at 14 and three quarters or 14 and seven eighths. It wouldn't strike me that anything in the area of the 14's would indicate anything because the stock had gone up.

Does that make sense to you, Bob? And I think he said, yes. And I think that's as far as that went.

Q Sir, I didn't hear the figure.

THE COURT: Would the reporter read the answer.

(The answer was read.)

Q When Mr. Korman on the 22nd came to get you out of your meeting did he relate to you at that time that the stock had dropped below 14?

A Well, I believe that I have testified that either Mr. Korman or Mr. Connolly told me that the stock had declined to 13 and seven eighths on substantial volume.

Q Was there any mention made during the discussion at

1 the board meeting when you were discussing the market
2 activity that if the stock went below 14 that there would be
3 a call to the Amex?
4

5 A No, I don't believe there was.

6 Q You don't believe there was?

7 THE COURT: Oh, yes, now he said he doesn't remember
8 any. You don't remember any such conversations; is that
9 right?

10 THE WITNESS: That's correct, sir.

11 Q Mr. Friedman, at the board meeting could you tell
12 me what was said about the intra-company profit elimination?

13 A Yes. I believe that was mentioned relatively
14 briefly. I think as I recall it the basic shortfall, if I
15 can use that expression, that we were discussing was a figure
16 that presupposed that this intra-company elimination entry
17 had been in fact done incorrectly at the earlier stage of
18 this. And my understanding of what we discussed was that
19 really it was the fact that Frank Bloom realized this error
20 that made him somewhat apprehensive about what was going on.

21 He mentioned it several times, and I really didn't
22 see what it had to do with the basic problem that he reported,
23 because that wasn't the major element of discussion at the
24 meeting.

25 I think it was a complicated factor so far as I was

concerned, and maybe that's why I assumed it was just done incorrectly.

Q But Mr. Bloom seemed apprehensive about this \$314,000 item.

MR. STRUM: Objection, your Honor.

THE COURT: Well, he can answer that. He said he was apprehensive.

A Mr. Bloom was apprehensive, but I don't think it was about the \$314,000.

THE COURT: It was the whole short, whatever it is, the shortfall?

THE WITNESS: That's what Mr. Bloom seemed to be apprehensive about.

Q Mr. Friedman, have you ever interviewed, subsequent to February 22, Mr. James McMahon?

A Subsequent to February 22? I met with Mr. McMahon with Mr. Strum, Mr. Berger, maybe Mr. Korman was present, I don't recall, in our office on the Saturday before Mr. McMahon testified before the commission. I guess that was the 30th, was it not?

Q Was Mr. McMahon still an employee on that day, sir?

A Yes, he was.

Q What did Mr. McMahon say about his trading shares of Gen, sir?

1 MR. STRUM: I object, your Honor.

2
3 THE COURT: I haven't read those briefs yet. What
4 is the purport of your objection? At that time was Mr.
5 McMahon a client?

6 THE WITNESS: No, we were not representing him.
7 Mr. Berger was representing him, and Mr. Berger --

8 THE COURT: Who is Mr. Berger?

9 THE WITNESS: Mr. Mark Berger I believe has appeared
10 in this action on behalf of Mr. McMahon.

11 THE COURT: I see. And he was his lawyer. You were
12 not his lawyer?

13 THE WITNESS: That's correct.

14 THE COURT: Well, why can't he answer the question?

15 MR. STRUM: Your Honor, I thought that it might be
16 appropriate before people testify as to what Mr. --

17 THE COURT: Well, this is before the statements of
18 the SEC. But I think I will let this gentleman testify as
19 to what he recalls Mr. McMahon said to him.

20 Q What did Mr. McMahon say, sir?

21 THE COURT: It's not for the truth of it, but it is
22 for what he said to him.

23 MR. DRAKE: Your Honor, our position is that it would
24 be an admission against Mr. McMahon's interest.

25 THE COURT: Well, maybe it would. Maybe it wouldn't.

But I will let him answer the question.

MR. DRAKE: We will know more after we get the answer.

THE COURT: What did he say?

THE WITNESS: I am trying to construct it, because he said a good deal of things. He said that he had gone home, as I recall, after the session of late Thursday night, and he had from his home called Mr. Rauch and he had said -- I think I have a pretty good recollection on this -- he said, sorry to bother you, Marvin, but please sell my stock. And he said that Rauch had told him, what's going on? Nothing, just sell my stock. And my father-in-law's. And then he then said that Rauch called him back early the next morning and said something, and I don't recall this exactly, but, did I really get a call from you last night? And McMahon said, yes, and I want you to sell my stock and my father-in-law's stock, and I think at that time I don't think he said anything further.

I have read Mr. McMahon's transcript, and I think I can remember the phrase from the transcript and --

THE COURT: What transcript are you referring to?

THE WITNESS: I have read the transcript of Mr. McMahon's testimony before the SEC.

THE COURT: I don't want to get that, I only want

1 to get what he told you.

2
3 THE WITNESS: I don't recall anything further of that
4 particular conversation. I do recall there was a second
5 conversation, and he said, sell my stock, and so on, and
6 I think he said he told something further to Mr. McMahon
7 in the way of information.

8 Q Did Mr. McMahon tell you that he told Mr. Rauch there
9 was a problem with the figures?

10 A That's what I don't recall. I have read that
11 transcript, and I can tell you the phrase from that, and it
12 sticks in my mind, and I can't track it to --

13 Q You don't know whether he said that or whether that's
14 what you recall from the transcript. All right, sir.

15 What position did Mr. McMahon occupy at Geon's?

16 A In terms of corporate offices, none that I was
17 aware of. But he was, I believe, considered to be the
18 controller of Geon Intercontinental, or really of, which is
19 the principal import company of the Geon group.

20 Q Geon Industries, Inc., I think is a holding company
21 basically.

22 A That's right.

23 Q So it wouldn't have a controller itself, would it?

24 THE COURT: I don't care whether it has a controller.
25 I don't give a hoot about that. But you say Mr. McMahon is

1
2 the controller of Geon --

3 THE WITNESS: Geon Intercontinental, and probably
4 some of the other import subsidiaries.

5 Q Is that also the principal sales group for Geon
6 Industries, sir?

7 A I would say that as a rough guess it accounts for
8 what three quarters of the sales.

9 Q Was Mr. McMahon also responsible for compiling the
10 consolidated financial statements?

11 A I really don't know what his specific responsibilities
12 were. I always treated him as Frank Bloom's assistant, and
13 that was my understanding of his role. I had very little
14 directly to do with Mr. McMahon.

15 Q When was Burmah notified of the possible problem
16 with the figures, sir?

17 A I would think that was about midday, 12 noon per-
18 haps on Friday the 22nd. Perhaps 40 minutes after the last
19 conversation when trading stopped. Perhaps earlier. I had
20 received the call earlier after the trading had stopped from
21 Mr. Peter Neuwirth, and he asked me, he said that someone
22 from Burmah, perhaps it was Mr. Roberts, and someone from
23 Burmah's counsel, perhaps Mr. Ford had been calling him, could
24 he now speak to them. And I told him that since the trading
25 was now suspended at this time and that he by all means should

1
2 go ahead and explain the situation to them.

3 Q Did Mr. Peter Neuwirth indicate what time these
4 gentlemen called him?

5 A I don't recall, no.

6 Q Did he indicate to you that they called him after
7 Geon's opening was delayed?

8 A I really don't recall. I don't know whether he in
9 fact did indicate it to me, but they had called. Whether
10 they had called in response to learning that the trading
11 had been halted or at some earlier time, I really don't think
12 he told me.

13 THE COURT: All right, gentlemen, I have got to go.
14 I have to see these people from Washington. I want to give
15 you this choice: I don't think it is going to be very long,
16 and I hate to keep you all around here. I certainly think
17 I could be back at 4 o'clock if you would like to continue
18 this afternoon, and I might be back before. Would that be
19 agreeable?

20 MR. STRUM: I'm agreeable to that, your Honor.

21 MR. DRAKE: Yes, your Honor.

22 THE COURT: All right. I will do that, and I may
23 get back before. I will deal with this as quickly as I can.

24 (Recess.)

25 MR. DRAKE: Your Honor, I have no further questions

of this witness.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. STRUM:

Q Mr. Friedman, I would like to direct your attention to the board meeting of February 21, 1974.

A At that meeting Mr. Friedman was there any discussion that it was common knowledge in the market place that Geon was holding a board meeting for the purpose of considering the Burmah contract?

A I don't recall any such discussion.

Q Did there come a time, Mr. Friedman, on Friday, February 22, when Mr. Korman told you about a conversation he had with Mr. Barbanell?

A Yes.

Q Did Mr. Korman tell you anything Mr. Barbanell said about a conversation that Mr. Barbanell had with arbitrageurs?

A My recollection is that some time during that day, and I would place it around noon, or perhaps nearer the afternoon, he told me that Mr. Barbanell had then told him that he had told, I'm almost positive he said, five or six people on the street about the board meeting.

Q Mr. Friedman, I would like to direct your attention to the conversation Friday morning with the American Stock

Exchange people in which you participated.

You did participate, I take it, in a conversation with Mr. Lee of the American Stock Exchange?

THE COURT: It was a telephone conversation as I recall it. Is that correct?

MR. STRUM: Yes, your Honor, that is correct.

A Yes.

Q Do you recall that conversation, Mr. Friedman?

A Yes.

Q Will you tell me please as best you can recall what Mr. Lee said and what you said?

A I really can't recollect it verbatim. As I recall I got on the phone a few moments after Mr. Connolly started talking to Mr. Lee and joined him and we recounted basically the status of what had happened at the previous day's board meeting and the uncertainty of the figures, reached the point at which we said, we told Mr. Maas this and we had asked him to stop trading.

THE COURT: I didn't quite understand that. We told Mr. Maas this?

THE WITNESS: I'm sorry. We told Mr. Lee that this was what we had told Mr. Maas.

THE COURT: Oh, Mr. Maas. All right.

Q At any time during that phone conversation, Mr. Friedman, did Mr. Lee criticize either you or Geon?

1 A Not to my recollection. I had the impression
2 that he was fairly sympathetic.

3 Q Did either you or Mr. Connolly said to Mr. Lee
4 that counsel would have to take the blame for what had
5 happened?
6

7 A No.

8 Q I would like to just go back, Mr. Friedman, to
9 the board meeting of Thursday, February 21.

10 Was there a discussion at that board meeting
11 concerning the question of whether a press release should
12 be issued?

13 A Yes.

14 Q Can you tell me the discussion that took place
15 on that subject?

16 A I don't think it was -- I think the basic discus-
17 sion was that we really didn't know what we could say. We
18 then were in a state of knowledge that I guess I can best
19 call dubious, and whether this was said or thought by me,
20 I think I articulated it, we were in a position that if we
21 said there was a problem and there didn't turn out to be a
22 problem, there certainly would be a radical effect on the
23 market, and we would have liability that we couldn't -- we
24 weren't sure, we really didn't know what the status was,
25 and in this posture if the matter could be kept confidential

1 that it seemed the proper course not to make an announcement
2 since there was nothing to be read.
3

4 We talked a great deal about confidentiality.
5 I remember we got to the point, and one thing sticks in my
6 mind that we discussed for a while when Mr. Bloom was told
7 to work as hard as possible with his staff to discover
8 whether in fact -- what the true facts were on the financial
9 situation, there was some talk about getting the assistance
10 of some people from Arthur Anderson who were Geon's
11 independent accountants.

12 We talked about doing that, and I remember we
13 decided that no one should call Arthur Anderson because that
14 would increase, or create the possibility that the news
15 just couldn't be contained. And we discussed also that no
16 one was to take telephone calls on the following day at all
17 from anyone inquiring as to Geon.

18 Q Mr. Friedman, there has been some conversation,
19 or testimony, about watching the market on Friday. What was
20 the purpose of watching the market?

21 MR. DRAKE: Your Honor, I object.

22 THE COURT: I think we have been through this
23 before. As I understand the purpose of it was to see if
24 anything unusual happened.

25 We have heard this testimony about Arbitrageurs

and people that might have known about it and the purpose of it was to see what happened in the market; is that right?

THE WITNESS: Well, I think there was concern for the leak, there was concern that with the barrage of phone calls that had been coming in if there was no one available someone might draw an adverse conclusion.

Those were some of the thoughts that were going on, that were articulated.

Q Mr. Friedman, did you attend the meeting at the American Stock Exchange on Monday morning, February 25?

A Yes, I did.

Q As best you can recall, Mr. Friedman, can you tell me what happened at that meeting?

A Yes. We had come to the meeting, the meeting had been called at the request, I believe, Mr. Gerard of the Exchange on Friday. We had come to the meeting with the press release that had been prepared on Sunday night after the Board meeting, and Frank Bloom's report, discussion of that, and the report and discussion with Burmah, and we started the meeting to talk about the press release.

My recollection is that it was Mr. Gerard who said that he wanted to talk about the conversation between Frank Bloom and Randy Gromet on Friday morning.

There was for a few minutes a discussion of who

1 said what to whom, and that got a little bit heated at one
2 particular moment, and my recollection was that Mr. Shukovsky
3 calmed that down and said really, you know we are here to
4 get something done and, you know, let's not fight about it.
5

6 THE COURT: You said it got heated. They were
7 cussing you fellows out because they thought they hadn't
8 got the right information?

9 THE WITNESS: Well, I think there was, I would
10 think --

11 THE COURT: Or were you cussing them out?

12 THE WITNESS: I think that it was a question of,
13 oh, Mr. Gromet said, but I said this, and Frank said, no,
14 I didn't say that at all. And I could remember a few chards,
15 but at that particular point, really it became more
16 conciliatory and the Amex said, we want your press release
17 to make clear the fact that we tried to get information in
18 the morning and you didn't give it to us, and in fact, we
19 would like you to say that Mr. Bloom misled Mr. Gromet.

20 We then basically worked on about one sentence
21 of that -- I say "we" -- I think it was basically Dave
22 Shukovsky, Steve Gerard and I, to come out with some
23 language which the Exchange felt adequately protected, or,
24 not protected isn't their word, adequate stated their point
25 of view and which we felt also fairly stated our understanding

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of it.

We came up with that final paragraph, and we had the last paragraph of the release retyped. That's the only paragraph of the release that was retyped.

I recall now, because the Exchange has a different size typewriter than we do. After that was done the last item was, and I think it was Gerard, but it could have been one of the others, said, we have been investigating-- I'm sorry, before that I think Mr. Connolly and I said, and we were rather strong on this, that we felt that the company had been subjected to unusual, we thought, unfair pressure from arbitrageurs, or representatives in brokerage firms. I'm not sure if arbitrageurs was perfectly correct.

There were two anecdotes in this. One was a call that we had received in our office, I had received in our office around a quarter of twelve on the preceding Friday, and that was a message from the secretary who works part-time for our retired senior partner, Mr. Scholer, that someone has called about Geon, can't get to anybody else, and he has called Mr. Scholer, and we thought that was very amusing, and we thought that he had probably gone to Mr. Kaye first, and unfortunately Mr. Kaye has been dead for five years.

Really we thought that this kind of a comic light

1 on it, and Frank pointed out that at one stage his secretary
2 had been reduced to tears because he couldn't tell these
3 fellows to go away and leave him alone.
4

5 We said that we felt that we are, you know, we
6 understood, it's a fair thing for representatives of
7 brokerage firms to call up to see if they can obtain
8 information. There is a lot of information that is not
9 really inside information, where do you look for something,
10 and things of that kind. Really, it's probably okay to ask
11 questions, but there is a limit. What these guys are trying
12 to do is get an advantage.

13 THE COURT: Did you ever find out who tried to
14 get hold of Mr. Kaye and Mr. Scholer?

15 THE WITNESS: There is an anticlimax to that
16 story. The answer is, I did, and he didn't have anything
17 to do with this transaction. I'm sorry to spoil the story,
18 but we didn't know that then.

19 We told that story at the American Stock
20 Exchange. We firmly believe it was one of those fellows.
21 We said we thought that the whole impact, the whole purpose
22 of this type of pressure was to obtain an unfair advantage
23 and access to information that wasn't generally known. And
24 that to do so, and you know, within transcending the bounds
25 of all sense of this kind, it would lead to situations where

1 people would, you know, no one answered the phone, people
2 would automatically panic and things like that, that we
3 felt that the Exchange ought to discourage member firms from
4 using this kind of pressure.
5

6 We were told that this was not an uncommon case,
7 and that they were aware of their regulatory responsibilities,
8 and that is one of the things they considered.

9 Then to go back to where I was, I think it was
10 following that, and as the very last item of the meeting,
11 that Mr. Gerard, as I recall, said, we are conducting an
12 investigation as to trading, and he said, I would like to
13 give you a list of names and see if you can recognize any
14 of the names.

#68 15 I recall some of the names, not all of them.
16 I think the first thing he said was Erico, or Urico
17 Associates, the Alpert or Albert Brothers of Great Neck.
18 And we didn't make note of that, but I don't think anyone --
19 no, no one recognized the name. Wachovia Bank and Trust
20 Company, and First National Bank of Denver, whom Frank Bloom
21 recognized. They were names that I think he had met in a
22 meeting arranged by Loeb Rhoades a year or so earlier, and
23 I think he said that he believed that they were Loeb Rhoades
24 customers.

25 Chesapeake Fund of Maryland, that didn't ring a

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bell with anyone, but the only thing we thought was we had a director who lives in Maryland. Then there were, I think, a husband and wife, Kahl may have been the name, I think you probably know.

Q Rene and Ralph Kahl?

A I just remember Kahl. And Mr. Korman, I think, took that list and he undertook to in the next few days to get officers and directors of the company and see if any of those people were in fact known to us.

Q I take it that is pretty much the sum and substance of that Monday meeting?

A Yes.

Q Mr. Friedman, I would like to direct your attention next to the following Thursday of that same week, which would be the 28th, if my numbers are correct.

A Yes.

Q Did you have occasion to go out to the premises of Geon on that day?

A Yes, I did.

Q Can you tell me, please, the purpose of your going and what you did?

A Yes, I was asked at the board of directors meeting the night before to go out to Geon and with Mr. Pisciotta, who is a vice president of Geon, to question

Matthew Siegler, and James McMahon, who were two employees of Geon of whom it had been mentioned by the American Stock Exchange, who it was said had traded in Geon stock on Friday, the 21st.

Q Did you speak to Mr. Siegler on that morning, Mr. Friedman?

A Yes, I did.

Q Can you tell me the substance of the conversation, please?

A Well, I was not the first to speak to Mr. Siegler, so I knew what he was going to say. Mr. Siegler said that he had placed an order with his broker on the --

MR. DRAKE: Your Honor, I want to offer my objection as to what Mr. Siegler said. He is not a party here.

THE COURT: I know, there has been some testimony, I think, about Mr. Siegler, and I think you brought out some testimony that there was a conference with Mr. Neuwirth. I will receive it.

Did Mr. Siegler say he placed an order?

THE WITNESS: He told his broker, Wood Walker & Company, in Long Island, to sell all of the shares in his account, which included, I don't know, three to six hundred shares of Geon, I don't remember the number, and several hundred shares of other stocks.

THE COURT: Other stock, you mean other stock of other companies?

THE WITNESS: Stock of other companies.

THE COURT: I see.

THE WITNESS: I remember General Cable was one of them and that he still retained 3,000 shares of Geon.

That he had sold the stock, he put in this order on Thursday, he had sold his house in New York, he was due to retire on May 1 of this year -- he has retired -- he had sold his house in Long Island, had bought a condominium in Florida, his wife was moving to Florida the following day with all their household goods, and that he had asked his broker to sell the shares in his brokerage account and to see if he could get delivery of the proceeds earlier than, I don't know whether he said this, but it was the following Tuesday, which would be early -- or Wednesday, which would be earlier than the normal settlement date. Because he had to pay moving expenses.

I heard independently, he gave me the name of his broker, I had heard independently of this that he was in fact moving and in fact I had thought that he was closing the sale of his house that afternoon.

On that basis it seemed to me that tentatively there was no reason to believe that Mr. Siegler had done

anything in this.

I had also checked that Mr. Siegler had had no role in the preparation of any financial data which bore on the problem that had been discussed by the directors the day before. That he was known not to be close with Mr. McMahon, in fact, no more than to say hello, so that it would be unlikely that there would be any occasion for McMahon to have called him, and on that basis I concluded that it did not appear to me that Mr. Siegler was apt to be guilty of trading with inside information.

I didn't go much further at that point.

BY MR. STRUM:

Q Did you speak to Mr. McMahon the same morning?

A Yes, I did.

Q Can you tell me the substance of that conversation?

A Well, when I arrived at Geon, I had intended to see McMahon when he came in, and I was told that he had called George Neuwirth that morning and asked George Neuwirth if he, McMahon, could meet with George Neuwirth.

George Neuwirth normally does not come in on Friday mornings, or didn't come in, wasn't planning to come in on that Friday morning. He said that he would come in at 10:30.

2 We waited for McMahon, and I think he showed up
3 about 11:30. I don't particularly want to see anybody who
4 looks like that again. George asked me to step out and let
5 George talk to him for a few minutes, that really for him
6 to talk to a lawyer and to ask him questions in the state
7 he was was not a very good idea.

8 Shortly thereafter I talked to McMahon, and
9 McMahon told me that he had gone home from the Friday --
10 I'm sorry, the Thursday, the 21st, all night accounting
11 session with Frank Bloom, had called Rauch and said, sell
12 my stock and my father-in-law's stock, and the following
13 morning he had another conversation with Rauch and confirmed
14 selling the stock -- no, I'm sorry. I don't believe he told
15 me that at that time.

16 We talked for a moment, and then he said, you
17 know, I don't know whether this is relevant or not, but --
18 he didn't say "relevant," he doesn't talk that way -- he
19 said, the reason that I really was upset and I spent the
20 whole night with my wife worrying about this, in fact I
21 haven't slept, is I got a call yesterday, I think it was,
22 that would be Wednesday, February 27th, from Mr. Rauch and
23 he called me and he said, are you somewhere where you can
24 talk? Call me back from a pay phone.

25 McMahon said he did that, and McMahon said

1 Mr. Rauch told me that what I should do is I should tell
2 the following story, I should say that I had called my
3 father-in-law, Mr. Maione, on Wednesday night, that would
4 be the Wednesday night before the board meeting, and told
5 him to place an order to sell all of my stock the following
6 day.
7

8 My father-in-law was then to say that he had
9 been busy all day and had not called Mr. Rauch until after
10 the close of business on Thursday. I, that is, McMahon,
11 was then to say, and he did not understand this, I remember
12 what he said, but he didn't understand the purpose of it.
13

14 He said he was then to say that I had called
15 Mr. Rauch around 11:00 o'clock on Friday morning the 27th
16 and I was to say that I asked him about if the transaction
17 had already gone through, and he was going to say yes, and
18 I was supposed to say something that I don't remember, and
19 I said, were you supposed to say it's too late already, or
20 something like that? And he said, I think that was the
21 story.

22 It seemed to me what McMahon -- I think I knew
23 what Rauch was trying to get McMahon to say, but I must say
24 my impression from that conversation was McMahon didn't
25 understand it.

That was my basic conversation with McMahon.

2 Q After you finished speaking to Mr. McMahon, did
3 you call anybody at the offices of Kaye Scholer?

4 A I think actually I got a call just as I was
5 finishing with him, and the call was from Mr. Korman and
6 Mr. Connolly and Mr. Kronoveth, I think they were all
7 together.

8 Q Can you tell me that conversation?

9 A I think Mr. Korman started. He said, we have
10 some real development that we have heard from the American
11 Stock Exchange. And I said, well, I have something to tell
12 you. And I said, well, go ahead, Lou. And he said, no,
13 you tell your story first. And I told my story, which
14 basically involved the -- my understanding of McMahon's
15 report, both McMahon's sales and confirmation, of what he
16 had been asked to say by Mr. Rauch.

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17 Mr. Korman said, "Well, you may not believe it,
18 but what we just heard from the American Stock Exchange is
19 that that is exactly the story that Mr. Rauch told.

20 It just seemed almost, you know, to find that
21 out was just, you know, a striking thing. And -- is there
22 a question pending?

23 Q No.

24 Mr. Friedman, going back once more to the
25 February 21st, 1974 board meeting prior to that meeting, was

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2 it your anticipation that the Geon Board of Directors 563
3 would ratify the contract?

4 THE COURT: I don't know about that. You are
5 the lawyer, lawyers always think a lot of things, but I
6 don't know whether he anticipated or not makes any
7 difference.

8 I think I will sustain the objection to that
9 question.

10 MR. DRAKE: In that case, your Honor, I will
11 object.

12 Q Mr. Friedman, on the occasions that Geon has
13 put out press releases from time to time have you been
14 involved in the process of press release preparation?

15 A I think I have been involved in almost every one.
16 Probably every one.

17 Q Did you have any discussions concerning whether
18 a press release would be put out if the Geon board were to
19 approve the Burmah contract?

20 A I don't think I did.

21 MR. DRAKE: Your Honor, discussions when?

22 THE COURT: Well, I will try to make out this
23 question.

24 Were you asked at the time of this board meeting
25 to participate in preparation of a press release on the

assumption the board might approve the Burmah deal? Were you?

THE WITNESS: The answer to that question is, no.

THE COURT: All right, that is the answer to the question.

Q Is there a reason for that --

THE COURT: No, he wasn't asked. After all, he is a lawyer serving his client. He wasn't asked. He said no.

MR. STRUM: Your Honor, I have no further questions.

THE COURT: Mr. Gordon?

CROSS-EXAMINATION

BY MR. GORDON:

Q Mr. Friedman, did there come a time when you had a telephone conversation with a Mr. Ivan Boesky of Edwards & Hanley?

A Yes, I did.

Q At or about the same time that you also have a telephone conversation with a Mr. Royce, an Arbitrageur from Abraham & Company?

A I believe I spoke on one occasion with Mr. Royce. I don't recall the relative timing of Boesky and Royce.

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2 Q Can you relate to the Court the substance of the
3 questions posed to you by Mr. Boesky and Mr. Royce on the
4 telephone?

5 THE COURT: Do them separately. I take it
6 these were separate conversations. Do you want to start
7 with Boesky, or whatever his name is?

8 MR. GORDON: All right. I will start with
9 Mr. Boesky, your Honor.

10 A You have a copy of my testimony before the SEC.

11 THE COURT: Yes. He will probably bring that
12 up too, but give us your best recollection of what
13 Mr. Boesky wanted to know.

14 THE WITNESS: My recollection, which was
15 refreshed by conversation with this gentleman, was that, and
16 I recall the conversation, I just didn't identify with
17 Mr. Boesky, was that he called to ask me a question about
18 an FTC consent decree which Geon was the subject of, and he
19 wanted to know what was that decree with a view to
20 determining whether that had any bearing on the Burmah
21 transaction.

22 The Geon consent decree was entered into in
23 May of 1969.

24 THE COURT: Well, I don't want to go into all
25 that. What did you say?

THE WITNESS: I will make it very briefly, because that is what I said.

THE COURT: That's what you said.

THE WITNESS: That's what I said. It was set forth because I wanted to make it clear that this was a matter of public record, and if Mr. Boesky did his homework he would find it out, it was in Geon's -- it said they should not conspire with other people to cut off customers, or something of that kind, and the prospectus said that Geon denied it had ever done that.

THE COURT: Let's cut it short. You told Boesky this is all a matter of public record, and I take it you added in your view it had no bearing on the Burmah deal because everybody knew all about it?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. GORDON:

Q Can you tell the Court the substance of your conversation with Mr. Royce?

A The substance of my conversation with Mr. Royce is very difficult for me, because I said very little and Mr. Royce said to me, I think this was in early February, first he called me saying, I am calling -- he told my secretary he was calling at the request of my partner, Saul

1 Kronoveth, and I took the phone call and he said, I'm with,
2 I think, Abraham & Company, and I am interested in the Geon-
3 Burmah transaction, and it seems to me that this has been
4 going on for a long time and there must be something wrong
5 with the deal.
6

7 I said, I'm not going to comment on that. Then
8 he said, well, shouldn't there have been a contract signed
9 already? And I said, I'm not going to comment on that.
10 He said, well, are you having trouble negotiating warranties,
11 representations?

12 Basically then I stopped even saying that, and
13 I probably should have hung up the phone on him, but I
14 stood there and I listened to him, and he went on and he
15 paused for a while to see if I would say anything, and I
16 wouldn't. And the reason I say it's hard for me to recall,
17 it's hard for me to sit on the telephone for 20 minutes
18 without saying anything, but he kept trying to get some
19 information from me. I don't think he got any.

20 THE COURT: You should have said, sorry, no
21 comments, and hung up.

22 THE WITNESS: That's what I should have said.

23 MR. GORDON: No further questions, your Honor.

24 THE COURT: All right. Are there any other
25 questions?

REDIRECT EXAMINATION

BY MR. DRAKE:

Q What were the dates of the Boesky and Royce conversations? Were they on the same day?

A As I say, I don't recall the relative time. I would put them the first week in February, last week in January.

Q You testified that there was a discussion at the board meeting about the issuance of a press release.

Was there any discussion at that board meeting about informing the Amex?

A I don't recall any discussion of that fact.

Q You stated that you had basically two considerations: You didn't know what you could say, and if you put out something, it might be misleading, and if you didn't put out something that might be misleading.

MR. STRUM: Objection, your Honor.

THE COURT: He didn't say all that.

MR. STRUM: That is not what he said at all.

THE COURT: He did not say that.

Q What was the discussion about, then, Mr. Friedman, let me ask you that?

A I think I said we were concerned with the fact that we couldn't say anything, because if we said something

1 that there was something wrong, and there wasn't, there
2 would be -- we'd precipitate some action, a fall-off in the
3 stock, and we would be liable to the fellows who had sold
4 in telling them wrong information.
5

6 My basic concern at that meeting was the press
7 release. The other fellows there were also concerned with
8 the Burmah deal, and in fact they wanted to tell the Burmah
9 fellows about this.

10 I was concerned to the extent that my consider-
11 ations bore on that, I thought they were absolutely wrong,
12 I thought we shouldn't tell Burmah, I told them we cannot
13 tell Burmah unless we make a press release, we cannot let
14 this out of this particular room.

15 I told them that I thought that from the Burmah
16 point of view that if we told them something was wrong and
17 nothing was wrong, we would have one hell of a time convincing
18 them afterwards.

19 Q Was there any discussion as to the possible
20 consequences of not putting out a press release?

21 THE COURT: This is the old business, isn't it,
22 if you said too much and the Burmah deal didn't go through,
23 you would have had some lawsuits, and if you said too little
24 and the Burmah deal went through, you would also have some
25 lawsuits. Is that what you were worried about?

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2 THE WITNESS: That is exactly it.

3 THE COURT: That seems to me rather common in
4 these cases.

5 THE WITNESS: I think you have some experience
6 in that.

7 THE COURT: Yes, I have some experience. That
8 is what you were worrying about?

9 THE WITNESS: Yes.

10 THE COURT: All right.

11 BY MR. DRAKE:

12 Q Was there any discussion of informing the Amex
13 of the situation?

14 A No, there wasn't.

15 Q Was there any discussion of letting the Amex
16 watch the market activity in Geon?

17 A No, there wasn't.

18 Q I believe you stated that members of the board
19 were directed not to take phone calls; is that correct?

20 A It was agreed that they would not, yes.

21 Q Did you anticipate the receipt of phone calls?

22 A Well, as I testified, we had repeatedly received
23 phone calls, and a great number of them on a daily basis,
24 so that we had been receiving them every day and we anticipated
25 the next day there was no reason to believe that those would

stop.

Q I believe you stated that at the board meeting there was a discussion concerning the dubious state of knowledge about the financial figures; is that correct?

A Yes, there was.

Q Did you not also testify that it was your impression that Mr. Bloom had told you at the board of directors meeting that the \$314,000 item was definite?

THE COURT: Was what?

MR. DRAKE: Was definite.

THE COURT: I don't know what that question means. We have been all through this. I think I recall some evidence that the mistake about the \$314,000 had been confirmed before the meeting and was there anything said about it at the meeting.

THE WITNESS: Mr. Bloom had reported to me, I testified that it was mentioned at the meeting and it was my understanding at the meeting that he was pretty sure that that was wrong, and, therefore, the dimensions of the problem were eight or nine hundred thousand dollars located in the branches. And, as I testified, the next morning he said, well, I verified that that was the case.

But that was one in a hundred chance that he was wrong at least in my mind.

2 Q Was there a discussion at the board meeting
3 about the fact of this \$314,000 item?

4 A I think there may have been a few words on it,
5 and I don't think anybody understood then whether it was
6 somebody said, well, would that mean there was \$600,000 or
7 \$300,000 and so on, and we stopped and we talked about the
8 900,000.

9 I think that's the number. And was there any
10 way of explaining that what with the figures that would
11 back it up, why could such a -- what business reason could
12 there be, you know, what method in the way you account for
13 this would indicate that you would be wrong as to your --
14 under your expectations as what you were doing by number of
15 that magnitude, and the \$314,000, as I understood it, didn't
16 enter into that.

17 Q Were you aware of the earning figures and the
18 earning requirements in the contract?

19 A Yes, I was.

20 Q What was your understanding as to how the
21 \$314,000 was straightened out? How would it affect the
22 earning figures in the contract?

23 MR. STRUM: I object to the question, your
24 Honor.

25 THE COURT: I think I will let him answer it.

2 He knows about the contract. I don't know about it affecting
3 the contract, but as I understand the evidence here the
4 deal with Burmah was conditioned to some extent on the
5 profits of Geon for the year 1973.

6 THE WITNESS: That's correct.

7 THE COURT: Therefore, if they made an error
8 of \$314,000 the profits would at least be that much less.

9 THE WITNESS: Well, I guess it's less than what,
10 is the question.

11 THE COURT: That's it, less than what. So it
12 would have a bearing if they got below whatever the figure
13 was.

14 THE WITNESS: That would be right. My under-
15 standing.

16 THE COURT: Go ahead.

17 THE WITNESS: My understanding, and I had had
18 a call from Frank Bloom the day before, was he had his ware-
19 house figures then and he said, we are running way above
20 where we expect to be, and in fact, it may be that our
21 profits are sufficiently high that we may have a problem,
22 we may have illegal price increases on the price controls.

23 I had advised the company in that direction
24 where their pricing was limited to mark-up, it was also
25 since Geon had had an ascending profit margin, Geon could

not raise prices even for increased costs if that would result in a higher profit margin, and based upon his warehouse experience he thought he would be above the level that would be permitted under price control.

So he was concerned about that. The \$314,000 wiped that problem out as I recall.

Q Mr. Friedman, you testified that you interviewed Mr. Matthew Siegler, and I believe you stated that it did not appear to you that Mr. Siegler had not traded on inside information; is that correct, sir?

A Yes.

Q How about Mr. Jim McMahon, sir?

A Mr. McMahon told me he had traded on inside information. That's a fair conclusion. I testified to his exact language.

Q What was that inside information, sir?

THE COURT: Well, I think we have got all that. I don't think I need any more. I think the record is abundantly clear on what the information was. What he says about it won't help much.

All right, are there any other questions?

MR. DRAKE: No, sir, your Honor.

THE COURT: All right. Have you any other questions?

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2 MR. STRUM: I have no further questions, your
3 Honor.

4 THE COURT: Do you have any further questions,
5 Mr. Gordon?

6 MR. GORDON: No, your Honor.

7 THE COURT: Thank you, Mr. Friedman, you are
8 excused, sir.

9 (Witness excused.)

10 MR. TIMMENY: Your Honor, would it be too early
11 to talk about next week's schedule?

12 THE COURT: Darned right it is. I will listen
13 to you fellows tomorrow, then I hope we get through tomorrow.
14 I am not going to listen to you next week.

15 MR. TIMMENY: I understood that your Honor had
16 a criminal case next week.

17 THE COURT: I have two criminal cases next week.
18 Not one, but two. Each three day cases.

19 I will listen to you tomorrow, and I hope we can
20 finish up.

21 MR. STRUM: I would like to ask a question on
22 that subject, if I may, your Honor.

23 THE COURT: Yes.

24 MR. STRUM: As I understand it, tomorrow the SEC
25 will perhaps finish its case.

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2 THE COURT: I hope so.

3 MR. STRUM: Obviously neither Mr. Gordon nor
4 myself has yet had an opportunity to put in our case.

5 THE COURT: That's right.

6 MR. STRUM: When would that take place, your
7 Honor?

8 THE COURT: I can't tell you. Perhaps you can
9 let me know at the end of the SEC case how much of a case
10 you want to put in, then maybe I can see when I can find
11 some time to do it.

12 MR. STRUM: I can certainly do that, your Honor.

13 THE COURT: But I doubt if it will be next week,
14 unless we can work it in late in the afternoon, or something
15 like that. But it will depend really on how long you think
16 it will take to put it in.

17 MR. STRUM: I will certainly be prepared to
18 answer that tomorrow, your Honor.

19 THE COURT: Would you? All right, and you, too,
20 Mr. Gordon?

21 MR. GORDON: Yes, your Honor.

22 THE COURT: All right, thank you, gentlemen.

23 (COURT ADJOURNED JUNE 21, 1974.)

24 (Time noted: 4:45 p.m.)
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2 SECURITIES AND EXCHANGE COMMISSION

3 -vs-

74 Civ. 1496

4 GEON CORP., et al.

5 June 21, 1974
6 10:10 a.m.

7 (In open court.)

8 THE COURT: Proceed.

9 MR. DRAKE: Your Honor, we have a couple of
10 preliminary matters. First I would like to announce that
11 Mr. Timmeny will not be here today. He had to go back to
12 Washington for an emergency in his family.

13 Second, the Commission would inform the Court
14 which pages of the transcript it relies on. We suggested
15 we give it to the Court in writing.

16 THE COURT: All right.

17 MR. DRAKE: Thirdly, your Honor, the plaintiff
18 Commission and counsel for Geon and Mr. Neuwirth and
19 Mr. Bloom would like to stipulate to the following facts:

20 That Mr. Louis Korman called Randy Gromet of the
21 American Stock Exchange on December 20, 1973, and requested
22 a delay in the opening of trading of Geon's common stock in
23 order that Burmah could approve the text of a press release
24 announcing that an agreement in principal had been reached
25 with Burmah for the acquisition of Geon for \$36,000,000 in

2 cash, and so that this press release could be issued by
3 Geon prior to the opening of trading of Geon stock on that
4 day.

5 THE COURT: All right. What was that date again
6 on that?

7 MR. DRAKE: December 20th, 1973.

8 THE COURT: All right. Thank you. All right,
9 you may proceed.

10 MR. PERLIS: Your Honor, we have also reached
11 stipulations, I believe, with regard to purchases and sales
12 of Geon securities from October 18, 1973, through February 22,
13 1973.

14 THE COURT: From February 22, 1974.

15 MR. PERLIS: 1974, correct.

16 This is by way of a document which will be
17 admitted by agreement of counsel, and will outline both the
18 purchases and sales by registered representatives at the
19 Hewlitt office as well as by Mr. Ivan Boesky, the Arbitrage
20 partner at Edwards & Hanley.

21 THE COURT: All right.

22 MR. STRUM: Your Honor, I am fairly certain I
23 would have no objection to that stipulation, but I must say
24 that I have never seen it.

25 MR. PERLIS: I apologize to counsel.

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2 THE COURT: Well, you ought to have a chance to
3 see it. I will tell you what I will do, I will receive it
4 subject to your checking it, and if there are any questions
5 you want to raise, you can raise them, but I will receive
6 the exhibit. I think that is what he wants to do.

7 MR. STRUM: That is perfectly agreeable to me.

8 THE COURT: DO you want to check it, too.

9 MR. GORDON: No, your Honor. I have checked it,
10 and I so stipulate.

11 THE COURT: You so stipulate. All right.

12 Would you mark it, please, Mr. Wallace, as an
13 SEC exhibit in evidence subject to Mr. Strum's right to
14 check it.

15 (SEC Exhibit No. 17 received in evidence.)

16 MR. PERLIS: In addition, your Honor, the
17 Commission and counsel for Edwards & Hanley have agreed to
18 stipulate that Edwards & Hanley received commissions in all
19 customer purchases and sales in Geon common stock at the
20 Hewlitt office of Edwards & Hanley for the period October 1,
21 1973 through February 21, 1974.

22 THE COURT: All right. Do you so stipulate?

23 MR. GORDON: SO stipulated, your Honor.

24 THE COURT: All right.

25 MR. GORDON: And a further part of the stipulation,

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2 that any commissions if any, earned on the trades of
3 February 22 will be subject to proof before this Court.

4 THE COURT: All right.

5 MR. PERLIS: Your Honor, it is our understanding
6 that it is not necessary that the Commission stipulate that
7 we have to prove this, it is just understood that the
8 Commission --

9 THE COURT: The Commission is going to prove it.

10 MR. PERLIS: Yes, sir.

11 THE COURT: Fair enough. I think that's all
12 right.

13 Where do we go from here, Mr. Drake?

14 MR. PERLIS: We would call, your Honor,
15 Mr. Martin Rosenfeld.

16 M A R T I N R O S E N F E L D, called as a witness on
17 behalf of the plaintiff, being first duly sworn, was
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. PERLIS:

21 Q Sir, will you please state your full name.

22 A Martin Elliot Rosenfeld.

23 Q What is your address?

24 A 926 Hewlett Drive, North Woodmere, New York.

25 Q Where are you employed?

1
2 A At Edwards & Hanley on 1300 Peninsula Boulevard,
3 Hewlett, New York.

4 Q In what capacity are you employed?

5 A Resident partner of the Hewlett office.

6 THE COURT: Are you the only resident partner
7 up there?

8 THE WITNESS: At the Hewlett office, yes.

9 THE COURT: All right.

10 Q When were you first employed by Edwards & Hanley?

11 A January 1962.

12 Q In what capacity was that?

13 A Account executive trainee.

14 Q When did you become manager of the Hewlett office?

15 A August of 1965.

16 Q That was prior to your becoming a partner of
17 Edwards & Hanley?

18 A I became a partner in December of 1970.

19 Q How many registered representatives do you
20 supervise at the Hewlett office?

21 MR. GORDON: When, if your Honor please?

22 MR. PERLIS: Currently.

23 A 19 currently.

24 Q And on February 22, 1974?

25 A 20.

1 THE COURT: Who is missing? Mr. Rauch?

2 THE WITNESS: Marvin Rauch, yes.

3 Q Were there 20 registered representatives for
4 the period October 1, 1973 until February 22, 1974?

5 A I believe so, yes.

6 Q Do you have an assistant manager at the Hewlett
7 office?

8 A An associate manager?

9 Q Who is that?

10 A David Lynn.

11 Q Is he a partner of Edwards & Hanley?

12 A David is a limited partner of Edwards & Hanley.

13 Q When did he become a limited partner?

14 A I'm not sure

15 Q Was it subsequent to February 22, 1974?

16 A No.

17 Q Prior to that?

18 A Yes.

19 THE COURT: In other words, he was a limited
20 partner during the period we're talking about here?

21 THE WITNESS: Yes, sir.

22 THE COURT: All right.

23 Q What are your duties as managing partner at the
24 Hewlett office?
25

1
2 MR. GORDON: Your Honor, I don't believe he said
3 he was managing partner. He was resident partner and --

4 THE COURT: Yes, I think as I understand it,
5 Mr. Rosenfeld, you were the manager of the Hewlett office
6 and then you became a partner and so that your title became
7 that of resident partner?

8 THE WITNESS: Yes, sir.

9 THE COURT: Were your duties substantially
10 different as a resident partner?

11 THE WITNESS: No, sir, exactly the same.

12 THE COURT: Well, I think the question is, what
13 were your duties, and what are your duties?

14 THE WITNESS: Sales, training, compliance,
15 product basically. Administration.

16 Q The day for day responsibility for compliance
17 at the Hewlett office was left in your hands?

18 A Yes, basically.

19 THE COURT: What are your duties as resident
20 partner with respect to the registered representatives?

21 THE WITNESS: I help them with product, I make
22 presentations on product, I accompany them on sales to see
23 clients.

24 THE COURT: Who hires the registered represent-
25 atives?

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2 THE WITNESS: We have a partner in charge of
3 training, and between us usually I first --

4 THE COURT: Where is that partner?

5 THE WITNESS: 1 Whitehall Street.

6 THE COURT: In New York City?

7 THE WITNESS: Yes, sir.

8 THE COURT: All right.

9 THE WITNESS: That would be initially for six
10 months, your Honor. Then after that the training basically
11 is left to the manager of the branch.

12 THE COURT: What I want to find out is if I
13 wanted to become a registered representative at Edwards &
14 Hanley, how would I go about it? Supposing I lived in
15 Hewlett and I wanted to work in Hewlett, how would I go
16 about --

17 THE WITNESS: It would be dependent upon how you
18 came into my branch. Either from an ad in the paper, and
19 there you would probably go to Whitehall Street in New York
20 and be interviewed.

21 THE COURT: You advertise for them?

22 THE WITNESS: Yes, sir, we have.

23 THE COURT: You have. So I come into your
24 office in response to an ad in the Long Island Daily, or
25 whatever it is called --

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THE WITNESS: Newsday.

THE COURT: Newsday. All right. And if I came there who would I see?

THE WITNESS: You would see me.

THE COURT: And I come in to see you and say, I have got a lot of rich widows and I would like to be a registered representative, what would you do?

THE WITNESS: I probably would ask how many rich widows. No, I would interview, and based upon my first impression, I would decide whether I felt you were worthy of going on for an additional interview by Mr. Cohen who is the partner in charge of training.

THE COURT: He is in New York?

THE WITNESS: He is in New York City, yes. Then based upon his interview and our subsequent conversations we would decide between us if the candidate was worthy of our training class.

THE COURT: All right. Then what would happen?

THE WITNESS: Well, we would hire him if he was worthy, and it was six months, it's now four months training just recently passed, and he would attend classes in the City and he would come back to the branch in the evening.

THE COURT: In other words, if you hired me after going through all this rigamarole I came to New York and I

1 saw Mr. Cohen and you decided, let's put him through training,
2 I would take some course in New York?
3

4 THE WITNESS: You would go five days a week to
5 New York, sir.

6 THE COURT: But I would be attached to the
7 Hewlett branch?

8 THE WITNESS: Yes, sir.

9 THE COURT: I would be attached to the Hewlett
10 branch and when I wasn't taking courses I would be working
11 with you?

12 THE WITNESS: Right, sir, yes.

13 THE COURT: All right.

14 BY MR. PERLIS:

15 Q As well as your duties as a resident partner,
16 sir, do you manage customer accounts as well?

17 A Yes, sir.

18 Q Approximately how many accounts do you manage?

19 A Well, when you say manage, is that on
20 discretionary basis or do I handle?

21 Q How many do you handle discretionary as well as
22 non-discretionary accounts?

23 A I would say probably three dozen. Maybe a little
24 bit more.

25 THE COURT:.. Do you know how many accounts you have

at the Hewlett office?

THE WITNESS: Almost 25,000 numbered.

THE COURT: Numbered. Some of them are dormant, I guess?

THE WITNESS: I would say the great majority.

THE COURT: Somebody comes in and says, I want 100 shares of the stock, he is an account, he may never come again?

THE WITNESS: He might move to Wisconsin, but he is an account.

Q Mr. Rosenfeld, what percentage of your time would you say you devote your activities as a salesman as opposed to your activities as resident partner?

A Very little.

Q Very little time as a salesman?

A For the few accounts that I have?

Q Yes.

A Yes, very little.

Q I wonder if you would explain to me the physical layout of the Hewlett office? For example, where do you sit, or, where is your office in the set-up at Hewlett?

A I am behind a glass partition on the back right side of the office.

Q When Mr. Rauch was employed at Edwards & Hanley

office, where did he sit in relation to your office?

A Four desks in front of -- actually, my office.

THE COURT: Let me see if I can visualize this. Do you have a big room there where the customers sit and there is a board of some kind so they can watch the ticker?

THE WITNESS: Yes. The board is up front, and when you first come into the office there's a receptionist and a switchboard operator, and there's about ten seats for people to sit in, and that's right in the middle in the back.

To the right of those seats --

THE COURT: Customers.

THE WITNESS: Yes. To the right of those seats is accountants' room and then my office. That's all there is. And the back.

Then in front of my office there's a secretary with a desk, another secretary with a desk, and then the area starts where the account executives would be, then there's a Mr. Linn, and then there was Mr. Rauch.

THE COURT: Where are all these 19 registered representatives?

THE WITNESS: They are in front. We have four rows for our registered representatives' desks going to the front. Six desks in each aisle.

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THE COURT: In front of where the customers are?

THE WITNESS: Yes.

THE COURT: Between the customers and the
ticker, or something?

THE WITNESS: Right. The front wall.

THE COURT: And they sit in front and the
customers are behind them and you're behind all that?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. PERLIS:

Q I understand that Mr. Linn sat directly behind
Mr. Rauch?

A Yes.

Q When did you first meet Marvin Rauch?

A Sometime in early 1972.

Q Under what circumstances did you meet him?

A He was introduced to me by a representative of
my office, Mr. Mlodinoff.

Q Would you spell that, please?

A M-l-o-d-i-n-o-f-f. Mr. Mlodinoff had gone to
school with Mr. Rauch. Mr. Rauch somehow came into the
office that day, I don't know why, and --

THE COURT: Mr. Mlodinoff is a registered
representative in your office?

1 THE WITNESS: yes, sir.

2 THE COURT: How long had he been there?

3 THE WITNESS: I think since 1969.

4 THE COURT: This happened in early 1972?

5 THE WITNESS: Early '72, sir.

6 THE COURT: Excuse me, go ahead.

7
8 A (Continuing) And Mr. Mlodinc^{ss} called me over
9 to where he was conversing with Mr. Rauch and introduced
10 me and told me that he was a, I think a vice president of
11 Philips Appel and Walden, a brokerage firm.

12 THE COURT: Where are they?

13 THE WITNESS: They are in the city, sir.

14 A (Continuing) And we chatted a little bit about
15 the market, about what was going on perhaps, and I had said
16 something to him at that particular time that if he ever got
17 tired of commuting perhaps he would consider Edwards &
18 Hanley, and that was the conversation.

19 THE COURT: Was he a registered representative
20 at that time as far as you know with this other firm?

21 THE WITNESS: Yes, he was. I asked him if he
22 would consider employment with Edwards & Hanley if he ever
23 got tired of commuting to the city.

24 Q When was the next time you ever saw or heard
25 from Mr. Rauch after that day?

1 A I ran into him subsequently on two or three
2
3 different occasions at an indoor tennis court during the,
4 I guess the fall-winter of '72, '73.

5 Q What was the next time you discussed the
6 possibility of his employment with Edwards & Hanley?

7 A I think he was back in the office for some
8 particular reason in March, April, maybe of 1973 and at that
9 time he said he had decided he was thinking of leaving
10 Philips Appel and Walden and perhaps it was a time for him
11 to come to Long Island, and he was going to be interviewed,
12 he was going to interview a few different firms for employ-
13 ment, and he would like to speak to me as well.

14 But he was going to Florida, and he would get in
15 touch with me when he came back.

16 THE COURT: Did Mr. Rauch, so far as you knew
17 when you saw him on this occasion, did he live out around
18 Hewlett?

19 THE WITNESS: Yes. He lives approximately ten
20 minutes from the office, sir.

21 THE COURT: All right.

22 Q Did you hear from Mr. Rauch within the next month
23 or two after that?

24 A No, I didn't. I called him.

25 Q When did you call him, sir?

1 A Some time after Easter. I would say probably
2
3 May, approximately. I think May.

4 THE COURT: This is May 1973, I take it; is that
5 right?

6 THE WITNESS: Yes, sir.

7 THE COURT: What did you say to him?

8 THE WITNESS: I asked him if he had made any
9 decisions or if he had been interviewed or if he still
10 intended to come speak to me about what Edwards & Hanley
11 had to offer, and he said, no, we were still going to be
12 seen, he would still get in touch with me, and I think at
13 that time we made an appointment for him to stop in my
14 office.

15 Q Did Mr. Rauch keep that appointment?

16 A Yes, he did.

17 Q When was that appointment?

18 A May, maybe June, '73.

19 THE COURT: May or June?

20 THE WITNESS: Yes. I'm quite sure, sir.

21 Q What was discussed at that time?

22 A Edwards & Hanley, our financial position, our
23 product lines, our syndicate calendar, our municipal bond
24 calendar, what we had to offer that he could not get at
25 Philips, Appel and Walden. Commission schedules.

1 THE COURT: Could you be a little more specific,
2 because I don't know anything about these things. What is
3 a product line?
4

5 THE WITNESS: Well, Philips, Appel and Walden,
6 he felt, Marvin felt he was restricted to specific stocks.
7 Edwards & Hanley is more of a full-service brokerage firm
8 where we handle tax shelters, bonds, we have our own municipal
9 bond department, corporate bond department. We are principal
10 market makers in over-the-counter stocks.

11 THE COURT: Do you deal in commodities?

12 THE WITNESS: No. That's the only produce we
13 don't have. We had just entered into insurance, we were
14 going into accident and health insurance, and which seemed
15 to be the, you know, the place to be.

16 THE COURT: And this other firm just dealt in
17 stocks?

18 THE WITNESS: Just primarily stocks, yes

19 BY MR. PERLIS:

20 Q At that time did you make him a formal offer of
21 employment with Edwards & Hanley?

22 A I'm not sure. I'm not sure if it was that time
23 or the time after that.

24 Q When was the time after that, sir?

25 A Maybe July, June. Again, I mean, I'm not sure.

Between May, June and July, whether I had one or two conversations with Mr. Rauch, maybe three, I'm not sure.

Q Did you initiate these conversations with Mr. Rauch, or did Mr. Rauch?

A I couldn't tell you.

Q When did Mr. Rauch finally inform you that he would accept an offer of employment with Edwards & Hanley?

A I would say late July. Because we had targeted his starting date for the --

THE COURT: Well, tell us to the best of your recollection, I have got in July you made an offer to him and he accepted it in late July?

THE WITNESS: I think so, your Honor, yes.

THE COURT: Try the best you can remember. I know it is difficult.

I would like to know what the circumstances were of your making the offer.

Did he come into the office, or how did you make an offer to him?

THE WITNESS: He was in my office one evening, I believe, or one day after work, and he had been interviewed by Hayden Stone and one or two other member firms whose names I don't recall, and he had told me what they had offered him as far as perhaps a private office, or a

1 secretary, different little things to perhaps make him more
2 interested in them.
3

4 THE COURT: Was Hayden Stone in New York?

5 THE WITNESS: That would be Garden City.

6 THE COURT: These were in the neighborhood?

7 THE WITNESS: Yes.

8 THE COURT: He was looking around the offices
9 in the neighborhood?

10 THE WITNESS: Yes, sir.

11 THE COURT: He didn't want to commute?

12 THE WITNESS: Right. And I told him what we
13 could do for him at Edwards & Hanley.

14 THE COURT: What did you tell him? What could
15 you do for him?

16 THE WITNESS: Well, the best we could do for
17 him was 40 percent commission schedule for one year --

18 THE COURT: What does that mean? 40 percent of
19 the commissions go to --

20 THE WITNESS: 40 percent of the commissions --

21 THE COURT: (Continuing) go to him?

22 THE WITNESS: Yes. Which was less than what he
23 was currently getting. I could not give him a private
24 secretary, which he had had. I couldn't give him his own
25 private machine, which he had had. I couldn't give him his

1 private office, which he had had. I couldn't give him a
2 \$50,000 insurance policy that he had had.

3 But he seemed to like the office, it was
4 extremely convenient. He liked our syndicate calendar, he
5 liked what --

6 THE COURT: What does that mean, he liked your
7 syndicate calendar?

8 THE WITNESS: Well, he liked the amount of
9 issues that Edwards & Hanley participated in as far as
10 underwritings --

11 THE COURT: As far as underwritings?

12 THE WITNESS: Yes, sir.

13 THE COURT: In other words, this was a different
14 source of--

15 THE WITNESS: Income.

16 THE COURT: (Continuing) Of income.

17 THE WITNESS: Yes, sir.

18 THE COURT: I see. You say the 40 percent com-
19 mission was less than he was getting, 40 percent of the
20 commission was less than he was getting in New York?

21 THE WITNESS: Yes. He was getting 42-1/2 percent.
22 And he had a leased Cadillac as well.

23 THE COURT: He had a what?

24 THE WITNESS: A leased Cadillac. They gave him
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1 a leased Cadillac.

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3 THE COURT: You didn't give him a leased
4 Cadillac?

5 THE WITNESS: No, sir.

6 THE COURT: All you gave him as I understand it,
7 is 40 percent commission on any business he did?

8 THE WITNESS: Yes. And I gave him a guarantee
9 for three months, I don't recall the amount of money, sir,
10 but I gave him a guaranteed draw versus commissions.

11 THE COURT: That was an advance against commis-
12 sions for three months?

13 THE WITNESS: Yes, sir.

14 THE COURT: How much was that?

15 THE WITNESS: I think it was \$3,000 or \$4,000.

16 THE COURT: For the first three months?

17 THE WITNESS: It was a draw -- a guaranteed draw
18 versus commissions. It wasn't an advance.

19 THE COURT: It's the same thing.

20 THE WITNESS: I just think of an advance giving
21 it to him ahead of time.

22 THE COURT: Did he have to give it back out of
23 his commissions?

24 THE WITNESS: No.

25 THE COURT: So if there was no business he would

keep it?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. PERLIS:

Q Do you recall on what date Mr. Rauch formally commenced his employment with Edwards & Hanley when he came on the job?

A I believe August 22.

Q Of 1973?

A '73, sir, yes.

Q To your knowledge, sir, did Mr. Rauch bring most of his customer accounts with him from Philips Appel?

A I don't know. On August 22?

Q Or subsequent.

A No, I don't believe he brought most of his accounts with him.

Q You don't believe he did?

A No, not most of them.

Q Did you discuss in your negotiating period how many accounts Mr. Rauch handled at Philips Appel?

A Yes.

THE COURT: How many?

THE WITNESS: I think he mentioned approximately three, four hundred, but that he had a prospective list of

perhaps 500 that he thought that Edwards & Hanley could help him with.

Q During the negotiating period prior to the time that Mr. Rauch was employed, did you become aware that he had a position in Geon Industries?

A Yes, I did.

THE COURT: That he had a position, you mean he owned stock in Geon Industries?

MR. PERLIS: That's correct.

THE COURT: When did you find that out?

THE WITNESS: Sometime during the negotiating period, your Honor, perhaps July, June.

THE COURT: Do you, when you hire these fellows, ask them to give you a statement of assets, liabilities?

THE WITNESS: Yes, I would ask him perhaps for his last year's W-2 form, perhaps his daily production reviews -- reports.

THE COURT: No, I'm thinking about his own personal financial -- he owned this Geon himself, I take it?

THE WITNESS: Yes, sir.

THE COURT: Did you ask him for a statement of his investments?

THE WITNESS: No, I wouldn't.

THE COURT: You don't do that?

1 THE WITNESS: No.

2 THE COURT: How did you happen to ask him about
3 Geon?
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5 THE WITNESS: I think it just came up inadvert-
6 ently. Mr. Rauch indicated to me at that time that he had
7 a position in Geon Industries and that he was very familiar
8 with the security and that he would be coming over with --
9 he would be coming to Edwards & Hanley, or whatever firm he
10 eventually did go to, with a position in the stock.

11 I think he was saying that in an effort to
12 impress me with perhaps the size of his accounts, or the
13 amount of commission that those accounts could generate.

14 THE COURT: Did he say how much Geon stock he
15 had?

16 THE WITNESS: I think about 25, 35,000 shares,
17 in that general area.

18 THE COURT: 35 to --

19 THE WITNESS: 25, 30. I'm not quite sure, your
20 Honor.

21 THE COURT: But around that?

22 THE WITNESS: Yes.

23 THE COURT: All right.

24 BY MR. PERLIS:

25 Q Did you understand that Mr. Rauch's holdings in

A Both.

A Yes, I think I just mentioned about -- the size of the issue was about 25,000 shares, 30,000. In that general area.

A I think it indicated that he had accounts that could perhaps -- accounts of some substance that could perhaps generate commissions, so it would be taken from a commission standpoint as a positive.

Q Did you ask Mr. Rauch at the time of his employment how many shares he intended to accumulate, or was there any restriction set on the number of shares he could accumulate while at Edwards & Hanley?

MR. GORDON: Objection. There are two questions,
your Honor.

THE COURT: I think I will sustain the objection to the form of that question.

What are your rules about these, if any, about what registered representatives can do in a security in which

1 they have a position? Do you have any rules on that?

2 THE WITNESS: Yes, sir.

3 THE COURT: What are the rules?

4 THE WITNESS: Well, the security would have to
5 meet certain rigid requirements that are set by our
6 compliance department as to fundamentals, as to the exchange
7 the security would be listed on, as to the price of the
8 security, as to wholesale regulations, suitability and as to
9 quantity. As to whether it was five percent or more, five
10 percent of the outstanding float of a security would be
11 certainly dangerous and --

12 THE COURT: That isn't all too clear to me.
13 What I'm interested in, do you have any rules and
14 regulations that affect the ability of a registered
15 representative to trade in securities in which he may have
16 an interest, or a substantial holding?

17 THE WITNESS: Well, the restrictions would be,
18 your Honor, that we would probably have to obtain research
19 approval for the security and certainly his personal accounts,
20 or his accounts on buying would certainly have to get better
21 prices -- in other words, the accounts would have to come
22 first, so to speak, but if the security met the requirements,
23 there wouldn't be any specific restrictions.

24 THE COURT: Well, what is there to keep a
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registered representative from getting his customers to
buy stock X at the time he is selling stock X for his own
account?

THE WITNESS: That's part of my supervisory
responsibilities.

THE COURT: How do you do that?

THE WITNESS: I check blotters on a daily basis,
I check the daily reports daily, I review monthly statements.
It would be very, very difficult for an account executive
to do that more than one time.

THE COURT: In other words, you review whatever
he does.

THE WITNESS: Yes, sir.

THE COURT: On a daily basis?

THE WITNESS: Yes. I review his books.

THE COURT: Excuse me. I didn't mean to inter-
rupt you.

BY MR. PERLIS:

Q Did you know of Geon prior to meeting Mr. Rauch?

A Probably so. Probably so, yes, sir.

Q Had you purchased any Geon securities prior to
your meeting Mr. Rauch?

A No, I never did.

Q To your knowledge, did any of your registered

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2 representatives have any position in Geon prior to
3 Mr. Rauch's employment with Edwards & Hanley?

4 A Position?

5 Q Any stock in any customer accounts.

6 A They may have.

7 Q Anything substantial?

8 A No, sir.

9 Q I believe you were discussing before certain
10 policies that Edwards & Hanley had with regard to what type
11 of stocks may be solicited by registered representatives
12 for customer accounts?

13 A Yes.

14 Q At the time of Mr. Rauch's employment with
15 Edwards & Hanley, was Geon a stock that was permissible
16 for solicitation by registered representatives?

17 A No, it was not.

18 Q For what reason, sir?

19 A Only because it was under \$15 on the American
20 Stock Exchange. It met all other requirements.

21 Q Did you inform Mr. Rauch at the time of his
22 employment that he would not be able to solicit Geon
23 securities?

24 A Yes.

25 Q What was Mr. Rauch's reaction to that?

1 A He said couldn't we obtain research approval,
2
3 and I said, yes, I didn't think there would be any problem
4 at all.

5 Q Did you seek to obtain research approval for the
6 solicitation of Geon?

7 A Yes, I did.

8 Q When was that?

9 A I believe I received verbal approval probably
10 from the first day of Mr. Rauch's employment, and written
11 approval maybe a week after. Approximately.

12 Q Had you notified the research department of the
13 extent of Mr. Rauch's position prior to your requesting
14 approval for solicitation of the stock?

15 A I believe on the form there's a spot where that
16 would be indicated. I'm not sure, though. I would indicate
17 how much more perhaps we were looking to accumulate.

18 Q Do you recall what you indicated?

19 A No, I don't.

20 Q Did the research department at the time, did
21 you indicate to the research department at the time you
22 requested approval the origin of the interest in Geon
23 securities?

24 In other words, it was Mr. Rauch who was
25 interested in accumulating more stock?

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2 A I'm sorry, could you repeat that entire question?
3 (Question read.)

4 A Well, yes, the account executive is the man
5 that prepares the form that must be submitted, and then
6 it's approved by me before being submitted. The account
7 executive would sign it, yes.

8 THE COURT: You use account executive as a
9 registered representative, that is interchangeable as I --

10 THE WITNESS: Yes, sir. Stockbroker, same thing.

11 THE COURT: All right.

12 Q Do you recall testifying, sir, before the
13 American Stock Exchange on March 1st, 1974?

14 A Yes.

15 Q I call your attention to page 23, line 19. Do
16 you recall being asked the following question and giving
17 the following answer:

18 "Q When they" referring to the research
19 department -- "approved the solicitation they did not know
20 the origin of the interest in Geon?

21 "A No."

22 MR. GORDON: Your Honor, objection. If he will
23 read the next question and answer you will get --

24 THE COURT: Go ahead and read the next question
25 and answer.

1
2 MR. PERLIS: "Q They did not ask you why they
3 were interested in obtaining special approval for this
4 solicitation?

5 "A Well, on the form that you have to submit
6 it asks questions of this nature: The approximate amount
7 of shares you might be looking to purchase it for, income,
8 gross, etc.

9 "Q Did you fill out such a form?

10 "A Yes."

11 A I approved it, Mr. Rauch filled it out.

12 THE COURT: What do you do with this form
13 after it is filled out and you get the approval c- the
14 research department? What do you do with that form?

15 THE WITNESS: The form is kept at the main office
16 on Whitehall Street.

17 THE COURT: SO this form is available?

18 THE WITNESS: Yes.

19 THE COURT: Whatever is on there would be avail-
20 able?

21 THE WITNESS: Yes.

22 Q At some time during the course of his employment
23 with Edwards & Hanley, Mr. Rosenfeld, did Mr. Rauch become
24 the number one producer of net commissions at the Hewlett
25 office?

1
2 A I believe so, yes.

3 Q Do you recall when that was?

4 A I'm sorry, I can't hear you.

5 Q Do you recall when that was?

6 A No, not really.

7 THE COURT: Well, it's not a very long period
8 of time we're talking about, is it?

9 THE WITNESS: No. I mean, sometime between
10 August and February. Probably January, maybe. I mean, it's
11 a difficult question.

12 THE COURT: What does number one mean in the
13 Hewlett office?

14 THE WITNESS: Well, number one net --

15 THE COURT: Yes.

16 THE WITNESS: That he had netted the most
17 commission dollars.

18 THE COURT: How much would that be?

19 THE WITNESS: At that particular time I would
20 say, between August -- maybe \$14,000, \$15,000, \$13,000.

21 THE COURT: In other words, that is a high
22 amount, and is that based on the total commissions, or is
23 that the commissions the firm gets after he gets 40 percent?

24 THE WITNESS: No, that's his 40 percent.

25 THE COURT: His 40 percent would be \$14,000 or

2 \$15,000.

3 THE WITNESS: Approximately, yes.

4 THE COURT: And that would be, say, between
5 August and February?

6 THE WITNESS: And February 22, yes.

7 THE COURT: All right.

8 BY MR. PERLIS:

9 Q During the course of his employment with
10 Edwards & Hanley, did Mr. Rauch request any special treatment
11 or special favors from you with regard to phoning in of
12 orders and other things?

13 A Yes.

14 Q Did you view Mr. Rauch as a prima donna in the
15 office?

16 MR. GORDON: Objection.

17 THE COURT: I will sustain the objection whether
18 he was considered a prima donna.

19 What were these favors he kept wanting?

20 THE WITNESS: He liked to call in orders to our
21 main wire room personally if they were of substance, if they
22 were of any type of size, or if it was in a security that
23 was particularly thin as far as volume is concerned.

24 And he felt --

25 THE COURT: What was the rule about that? Who

1 would do that ordinarily?

2 THE WITNESS: Well, I would do that, Mr. Lynn
3 would do that, or, on occasions, I gave account executives,
4 not just Mr. Rauch, permission. I have about four or five
5 in my office who did that.
6

7 THE COURT: All right.

8 So that wasn't too unusual.

9 THE WITNESS: No, not at all.

10 THE COURT: All right, what else?

11 What other kind of favors did he want?

12 THE WITNESS: That's about it.

13 THE COURT: That's the only one?

14 THE WITNESS: The only one I could think of, yes.

15 THE COURT: Otherwise he was just like any other
16 registered representative as far as that was concerned?

17 THE WITNESS: Yes. Even that was not out of the
18 ordinary, as I mentioned.

19 BY MR. PERLIS:

20 Q Did you in fact court Mr. Rauch while he was
21 employed at Edwards & Hanley?

22 MR. GORDON: Objection.

23 THE COURT: Did he what?

24 MR. PERLIS: Court him.

25 THE COURT: I think I would sustain the objection

1 to that. But certainly I would like to hear, was there any
2 particular difference in your relationship with Mr. Rauch
3 and these other registered representatives, this fellow,
4 he looked like a pretty good fellow, he was building up
5 these commissions and he became number one; is that right?
6

7 THE WITNESS: Yes.

8 THE COURT: I suppose you were sort of interested
9 in building him up because he looked like a pretty good
10 fellow to build up; is that right?

11 THE WITNESS: Yes, sir.

12 THE COURT: How did you do it?

13 THE WITNESS: Well, number one, I put him, as
14 far as seating is concerned, in front of Mr. Lynn.

15 Mr. Lynn is quite qualified and quite capable,
16 and I wanted Mr. Lynn's expertise to perhaps rub off on
17 Mr. Rauch.

18 I sat with Mr. Rauch certainly on occasions and
19 tried to teach him mutual funds and what municipal bonds
20 were and corporate bonds.

21 I went out, I socialized with Mr. Rauch on
22 occasion, but I socialized with anybody in my office. I
23 don't think any special courting, certainly considerably
24 less than what I do with other people in my office.

25 Q Once again, Mr. Rosenfeld, do you recall testify-

ing against the American Stock Exchange on March 1, 1974?

A Yes.

Q This is page 79, line 24:

MR. GORDON: May I ask counsel to read the question and wait before reading the answer, your Honor? I probably will object to the form of the question.

THE COURT: I don't have a page 79 here.

MR. PERLIS: Your Honor, this is the testimony before the American Stock Exchange.

THE COURT: We don't have it. I will have to listen to it.

All right, go ahead.

Q Do you recall being asked the following series of questions and giving the following answers, sir:

"Q That is why I can't understand why Mr. Rauch didn't use the teletype."

MR. GORDON: Wait a minute.

THE COURT: Wait a minute. Is that a question or an answer?

MR. PERLIS: That was the question. The question is really irrelevant to the answer, your Honor.

MR. GORDON: Well, just --

THE COURT: Has anybody got a copy of this?

MR. GORDON: Your Honor, I have no objection to

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4 them questioning a witness as to a prior inconsistent state-
5 ment, if any, but I don't think that these transcripts are
6 properly before the Court. They are not sworn transcripts.

7 THE COURT: Well, that is all right. That goes
8 to the weight they are given, I suppose. I don't think that
9 question at the bottom of the page is a question, but I will
10 allow you to read the answer on the top of page 80, if you
11 want to, and ask the witness whether he said this.

12 MR. PERLIS: Yes, your Honor.

13 Q "I guess the best way to explain Mr. Rauch is
14 that he's -- a lot of people feel this way, that they are
15 privileged characters. They are going through the order
16 desk rather than the normal system in order to have special
17 treatment. He was, let us say, a large producer. Or even
18 perhaps I courted him. He was used to this type of treatment
19 at Philips Appel. He had his own private secretary, he had
20 all these fancies and frills, so to speak, that the average
21 registered representative in my branch never had."

22 A Yes.

23 Q Is that the answer you gave, sir?

24 A Yes.

25 THE COURT: Did you make that statement?

 THE WITNESS: Well, I think when you first stated
 it that many people have, many people feel that way is what

1 I said.

2
3 THE COURT: Why don't you read the rest of that
4 answer?

5 Q "The funny thing is there are only two or three
6 people in my office who usually come to me for anything.
7 Only two fellows, and I only have three, who came from other
8 places in Edwards & Hanley. One is a Murray Dorfman and
9 Mr. Rauch who, to them phoning orders in was as commonplace
10 as my people walking up to the desk.

11 "I phoned orders in for Marvin and I argued with
12 him many times, and I said, type -- I'm sorry -- do me a
13 favor, type of thing, whether it was Geon or not, it was
14 just something that he kind of required."

15 THE COURT: Did you make that answer?

16 THE WITNESS: Yes.

17 Q Sir, what procedure is followed by Edwards &
18 Hanley with respect to the opening of new accounts?

19 A The new account form is filled out by the
20 account executive, he signs it, he submits it to myself or
21 to Mr. Lynn for managerial approval. We review the form,
22 make sure that all the necessary information is there, check
23 the back to make sure that whatever forms are necessary are --
24 it's designated where those forms might be. Whether the
25 stocks should be shipped out, whether dividends should be

reinvested, whether cash should be held. And I would sign it and send it to Hempstead for another partner's approval.

Q Would that --

THE COURT: Did you check any of the information on it?

THE WITNESS: On occasion we do spot checks. We spot check a bank. We might check an employment.

THE COURT: Was the customer there when these things were made out?

THE WITNESS: I would say a tremendous majority of our new account forms are filled out via telephone conversations.

THE COURT: The registered representative fills out a form and says --

THE WITNESS: While he's talking on the phone.

THE COURT: (Continuing) And says, this is for Willie Jones, but you don't check Willie Jones?

THE WITNESS: No, sir.

BY MR. PERLIS:

Q You say you sent it to Hempstead after that?

A Yes, sir.

Q Does another partner sign the new account card?

A Yes. I keep one copy at the branch.

Q Is this procedure also generally followed with

transfer accounts as well as new accounts?

A Yes.

THE COURT: Do you want to tell me what do you mean by a transfer?

MR. PERLIS: An account which comes over from another brokerage firm rather than someone walking off the street into Edwards & Hanley.

THE COURT: All right. Same procedure?

THE WITNESS: Basically, yes, sir.

Q Are all new accounts reviewed by yourself or Mr. Lynn?

A Yes.

Q Do you review Mr. Lynn's work?

A Yes.

Q Do you review all the accounts that he reviews?

A Pardon?

Q Do you review all the accounts that he reviews?

A No, I don't.

Q Is there any particular person in Hempstead to whom you send these new account cards for their approval?

A Mr. Gilbert.

Q Is Mr. Gilbert your direct supervisor?

A I think so, yes. From a back office standpoint, yes.

1
2 THE COURT: What is Mr. Gilbert? Is he a
3 partner?

4 THE WITNESS: Yes, sir.

5 THE COURT: He is a partner?

6 THE WITNESS: Yes, sir.

7 THE COURT: How many officers are there in this
8 Hempstead group?

9 THE WITNESS: I'm not quite sure, because we
10 have a lot -- 1 Whitehall Street, and there is Mr. --

11 THE COURT: Is Whitehall Street part of this
12 group? Why do you clear these things in Hempstead?

13 THE WITNESS: Well, our back office is in
14 Hempstead, and our executive offices are in Whitehall Street.

15 THE COURT: I see. And the back office is
16 supervised by a partner in Hempstead?

17 THE WITNESS: Yes, sir. Mr. Edwards, Mr. Gilbert,
18 Mr. Patti.

19 Q Prior to signing a new account form do you
20 require that all the information blanks on that card be
21 filled in?

22 A Yes.

23 Q Invariably?

24 MR. GORDON: Objection.

25 THE COURT: Do you remember any occasion where

2 you have approved an account form where all the --

3 THE WITNESS: Yes, I have approved new account
4 forms where we were obtaining a social security number.
5 We have been obtaining a social security number. I have
6 approved new account forms.

7 THE COURT: Before you got the social security
8 number?

9 THE WITNESS: Yes.

10 BY MR. PERLIS:

11 Q And the social security number would be subse-
12 quently added to the account card?

13 A Yes, sir.

14 Q Would you check to make sure that such
15 information had been added at some time?

16 A Well, we get reminders from our back office
17 that they don't have it yet, and we send out forms and we
18 would have, you know, we send down to apply for one if one
19 has never had a social security number, like a minor.

20 Q I believe you indicated that when you approve
21 new account forms that you also see to it that whatever
22 appropriate other forms are required are obtained?

23 A Well, there are two boxes on the back of the
24 new account form. It will say, "obtaining" or "attached."
25 And I mean, if it's going to be a tenants in common account,

1 a joint account, you would need a tenants in common agreement,
2 and they would indicate whether it was being obtained or it
3 was attached. That's it.
4

5 Q What about with respect to a margin account?

6 A Same thing.

7 Q I believe you testified that from time to time
8 some attempt is made to verify certain of the information
9 in new account cards?

10 A Yes.

11 Q What percentage of new account cards would you
12 estimate that you have spot checked or ordered spot checked?

13 A I basically rely on the integrity of the account
14 executives. I couldn't give you a figure. I wouldn't know.

15 Q Would it be a very small percentage of new
16 accounts opened?

17 A Yes, it would be a small percentage.

18 Q With respect to a margin account as opposed to
19 a regular cash account, is the credit worthiness of a
20 customer a more important factor to be considered prior to
21 approving that account?

22 A Not particularly.

23 THE COURT: Do you consider it at all?

24 THE WITNESS: Yes, on all accounts.

25 THE COURT: To what extent do you consider it?

2 Do you want to know whether this customer has got a job and
3 whether he has got money in the bank?

4 THE WITNESS: Yes. If he has the necessary
5 funds to pay for the purchase that has been indicated. The
6 only difference on the margin account would be that we are
7 lending him money, basically, and he has to meet certain
8 margin requirements. So that would be the only difference.

9 Q So that no additional effort, or any special
10 effort is made to verify or to spot check margin accounts
11 as opposed to cash accounts as far as the information
12 contained on the new account cards?

13 A No, not really.

14 MR. PERLIS: May these be marked, please?

15 (SEC Exhibits 18 and 19 were marked for
16 identification.)

17 MR. PERLIS: Your Honor, I would offer SEC
18 Exhibits 18 and 19 into evidence if there's no objection.

19 THE COURT: I would like to know, what are they?

20 MR. PERLIS: These are the new account cards,
21 your Honor, for the accounts of James McMahon and Louis
22 Maione at the Hewlett office of Edwards & Hanley.

23 MR. GORDON: Yes, we have no objection.

24 THE COURT: All right, they will be received.
25 Which is which? 18 is what?

xvx

MR. GORDON: 18 is McMahon, and 19 is Maione,
your Honor.

THE COURT: What is Maione's name?

MR. PERLIS: Louis.

THE COURT: How do you spell that?

MR. PERLIS: M-a-i-o-n-e.

THE COURT: All right, they will be received.
I take it there is no objection?

MR. STRUM: No objection.

(SEC Exhibits 18 and 19 were received in
evidence.)

BY MR. PERLIS:

Q Mr. Rosenfeld, I show you what has been marked
SEC Exhibits 18 and 19, and I ask you if you have ever seen
these before (handing)?

A Yes.

Q What are those documents, sir?

A New account form, copy of the new account form.

Q Did you approve each of those account forms
prior to their opening, or see them prior to their opening?

A Just one.

Q Which one did you see, sir?

A James McMahon.

Q That is SEC Exhibit No. 18 in evidence?

1
2 A Yes.

3 Q You did not in any way review the new account
4 form of Louis Maione?

5 A No.

6 THE COURT: Did anybody review that, does the
7 card indicate?

8 THE WITNESS: Yes, Mr. David Lynn.

9 THE COURT: Mr. Lynn did?

10 THE WITNESS: Yes.

11 Q To your knowledge, sir, did you instruct anyone,
12 or did you yourself attempt to verify any of the information
13 contained on either of those cards?

14 A No, I never did.

15 Q Are these new account cards for the opening of
16 margin accounts rather than cash accounts?

17 A Same thing, other than one numerical difference,
18 Type 1 would be indicated if it was cash, Type 2 if it was
19 margin.

20 THE COURT: What do those indicate?

21 THE WITNESS: James McMahon is indicated as
22 Type 2.

23 THE COURT: That means margin?

24 THE WITNESS: Margin account, sir.

25 THE COURT: All right. How about the other one?

THE WITNESS: Louis Maione, Type 2.

BY MR. PERLIS:

Q They are both margin accounts?

A Yes, sir.

Q I believe the McMahon account indicates it was opened on August 30, 1973?

A Yes.

Q At the time these were Mr. Rauch's accounts, were they not, sir?

A Most definitely.

Q At the time Mr. Rauch presented these, the McMahon account to you for your signature, did you inquire of him as to the accuracy of the information contained on that card?

A He signed it, and that was verification enough.

Q But you made no --

THE COURT: Well, let me ask, I'm interested in the procedure. Did Mr. Rauch come to you with that card and say, here is McMahon's card, would you sign it?

THE WITNESS: Yes.

THE COURT: Or did this come to you just sort of through the --

THE WITNESS: No. Mr. Rauch would come to me for my personal signature.

2 THE COURT: He would come to you and present it
3 to you?

4 THE WITNESS: Yes.

5 THE COURT: And you didn't ask him any questions
6 about it?

7 THE WITNESS: No, this account was being
8 transferred from Loeb Rhoades.

9 THE COURT: All right.

10 THE WITNESS: That was an existing account that
11 he had already.

12 THE COURT: All right.

13 BY MR. PERLIS:

14 Q Had all the informational blanks on the McMahon
15 account card been filled in?

16 MR. GORDON: You mean at that time?

17 THE COURT: Yes, if you remember.

18 MR. PERLIS: As it exists now.

19 MR. GORDON: As it exists now, the document
20 speaks for itself.

21 THE COURT: Have any of them not been filled in?

22 THE WITNESS: Well, credit remarks is not filled
23 in, customer's signature is not here.

24 Q What about where it says bank employee spoken to?

25 A Well, I can't make it out. There is something

there, but I can't make it out, what it is.

Q Is there another column to the right of that that says reference checked by?

A Yes.

Q Is that empty?

A That appears to be empty, yes.

Q Is the same true with respect to the Maione account?

A There seems to be a name there as well, but then on reference checked, it seems to be blank as well.

Q Did you inquire of Mr. Rauch with respect to the McMahon account card as to the blanks, the informational blanks on that card at the time it was presented to you?

A I'm sorry, did I what? Did I --

Q Did you inquire of him as to the blanks, getting information to fill in the blanks, such as the customer's signature?

A No. This to me is not really a blank new account form. There is nothing irregular here. I mean, most of our new account forms we don't get customers' signatures. The only thing that really would appear to me to be missing is how long he worked at Arthur Anderson.

THE COURT: You don't get the signature of the customer at any time?

1 THE WITNESS: In most of the new account forms,
2 your Honor, they are completed via the telephone. Very little
3 is done in person, you know, while a man is in the office.
4 When somebody is in the office they sign it, yes. When a
5 man is out on an interview at an office, they will get a new
6 account form signed.
7

8 But a great percentage of our accounts are opened
9 via the telephones.

10 THE COURT: But what happens if a customer sells
11 100 shares of stock and puts that on the phone and somebody
12 brings in the stock certificate and he has got the signature
13 on the back of the stock certificate, how do you know that
14 it is his signature?

15 THE WITNESS: Well, I would say it is, that when
16 somebody brings in a -- well, we really don't.

17 THE COURT: You really don't know?

18 THE WITNESS: We really don't.

19 THE COURT: Isn't that risky?

20 THE WITNESS: I think it is a part of the risk
21 of the industry, perhaps, but that's -- I have never had
22 a problem with that in 12 years.

23 BY MR. PERLIS:

24 Q Do you see underneath your name on the McMahon
25 account card the column that says accepted by, it says,

"partner"?

A Yes.

Q Is that also blank?

A It should be blank. This is the copy I retain at the office.

Q Do you know what color the copy is that is retained at Hempstead?

A White.

Q Did you subsequently learn that any of the information contained in either of those two account cards was false at the time it was placed on there?

A Yes.

Q What information was that? First with respect to the McMahon account.

A Name of employer.

Q What employer is listed there?

A Employer is Arthur Anderson & Company on this new account form.

Q What did you subsequently learn to have been Mr. McMahon's employment at the time that account card was filled out?

A I subsequently learned that Mr. McMahon was employed by Geon Industries.

Q Did you subsequently learn whether or not any of

the information contained on the Maione account was inaccurate?

A No.

Q So far as you are concerned today you are not aware of any inaccuracies on that account card?

THE COURT: I didn't hear that.

A On the Maione?

Q Maione.

THE COURT: What is your question?

MR. PERLIS: The question is, your Honor: As of today he is not aware of any inaccuracies on that account card?

A Well, the inaccuracy that I'm aware of today, from everything that happened, is that Mr. Maione seemingly did not order this.

Q But not as to the information on the card itself?

A As far as the information itself, I think that's accurate.

Q Did you subsequently learn that there was any error as to the phone number on the McMahon account? Home phone number.

A Home phone number?

Q Or business phone number?

A I think the business phone number. I think I

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2 called and didn't get anything.

3 THE COURT: When this account of McMahon was
4 opened -- that was on August 30th, 1973?

5 THE WITNESS: Yes, sir.

6 THE COURT: When did you find out that he wasn't
7 employed by Arthur Anderson?

8 THE WITNESS: February 27, I believe, 1974,
9 your Honor.

10 Q You have no information, sir, as to whether or
11 not the home phone number on the McMahon account is the
12 phone number of a member of Mr. Rauch's family?

13 A No, I believe this was Mr. McMahon's home phone
14 number, because I have spoken to Mr. and Mrs. McMahon at
15 home. I think this is the number I called. But I don't
16 really know.

17 Q When did you learn that the information contained
18 in those cards was inaccurate, or, on the McMahon card was
19 inaccurate?

20 THE COURT: I just asked him that. He said it
21 was February 27th, 1974; is that right?

22 THE WITNESS: Yes, sir, I believe so.

23 Q How did you learn of that?

24 A What?

25 Q How did you learn it was inaccurate? How did

1
2 you find out?

3 THE COURT: How did you find out?

4 A I received a phone call from Mr. Gilbert, partner
5 of Edwards & Hanley, that the American Stock Exchange was
6 investigating the Geon trades of February 22 and some people
7 who sold stock on February 22, and they came up with an
8 inconsistency as far as one of our accounts are concerned,
9 James McMahon. That in trying to verify the employment that
10 we gave that they were unable to verify, and Mr. Gilbert
11 then asked me would I please find out from Mr. Rauch, or
12 wherever I could, where Mr. McMahon does work. And that was
13 that.

14 THE COURT: What did you do?

15 THE WITNESS: I called in Mr. Rauch and I asked
16 him about the McMahon account, and he said to me, no,
17 that's the employment. I said, the American Stock Exchange
18 says it is not the employment.

19 I think at that time also Mr. Gilbert asked if
20 there were any related accounts, if there were any related
21 accounts, and I asked Mr. Rauch this, and I think at that
22 time he related to me that Mr. Maione and Mr. McMahon were
23 related, father-in-law, son-in-law.

24 Then I think I spoke to Mr. Gleit, counsel from
25 Delson & Gordon, and I think he had called me at this time,

1 and I think he or Mr. Gilbert said I should try Mr. Maione
2 and perhaps I could find out where Mr. McMahon works through
3 Mr. Maione, and I did that.
4

5 I called up Mr. Maione and he was not in. I
6 left a message to call me back. He did call me back. I
7 asked him if Mr. McMahon was his son-in-law. He said, yes.

8 I asked him if he knew where I could reach
9 Mr. McMahon right now, and he said at business. I said,
10 do you have the phone number? He said, no.

11 I said, where would his business be? And he
12 said Geon Industries. And I related that immediately to
13 Mr. Gleit and Mr. Gilbert.

14 Q Did Mr. Maione call you, or did he call
15 Mr. Rauch when you had spoken to him on February 27?

16 A Called me. I just said that.

17 Q Does Edwards & Hanley require a signed margin
18 agreement for each margin account at the time the account is
19 opened?

20 A No. That's why there is a space provided where
21 it says we will be obtaining.

22 Q Does Edwards & Hanley --

23 THE COURT: We will be what?

24 THE WITNESS: Obtaining the agreement that's
25 necessary, whether it's margin or whatever it may be.

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Q Does Edwards & Hanley require a signed margin agreement prior to the execution of any trades in any margin account?

A No.

Q When does Edwards & Hanley require a signed margin agreement?

A As soon as possible.

Q What does as soon as possible mean? Is there any time frame set?

MR. GORDON: When, your Honor?

THE COURT: Well, the point is this is a Type 2 account, these two cards.

THE WITNESS: Yes, your Honor.

THE COURT: And Type 2 means to you margin?

THE WITNESS: Yes, sir.

THE COURT: Now, when you get that card what do you do about the margin --

THE WITNESS: Well, if it's not attached the account executive is told to obtain it, and he has responsibility to send out the initial blank margin agreement to be signed. Again, because a lot of these accounts are opened on the phone. We just don't get them initially as we don't get the new account form signed.

THE COURT: How do you follow up on that?

1 THE WITNESS: Hempstead follows up, probably. I
2 don't know, within maybe two weeks or so approximately. I
3 don't know the exact time. With a form that says, first
4 request for margin agreement. And the first request, upon
5 receiving that, I would probably go to the account executive,
6 not probably, I would, either myself or my secretary or
7 Mr. Lynn would go to the account executive and inform him
8 that we do not have the margin agreement yet, and would he
9 please make sure he obtains it.
10

11 At the times we go forward at the second request
12 because it still has not come in --

13 THE COURT: Do I understand that you don't
14 follow it up at all but Hempstead will send out something
15 to you and that will tick you off?

16 THE WITNESS: Yes, sir.

17 THE COURT: But you don't do anything until you
18 hear from Hempstead; is that right?

19 THE WITNESS: Yes, sir.

20 THE COURT: All right.

21 THE WITNESS: Other than having your account
22 executive send out the initial one upon my signing the new
23 account form, yes.

24 THE COURT: And you just do that orally, you
25 say send out the form?

1 THE WITNESS: Yes, sir.

2 THE COURT: That is your practice?

3 THE WITNESS: Yes, sir.

4 BY MR. PERLIS:

5 Q These margin accounts can be sent out in the
6 mail and returned signed back to you in the mail?

7 A Yes. In fact, to me or to Hempstead.

8 THE COURT: Well, which is it? Do you have a
9 return envelope with the form?

10 THE WITNESS: Sometimes Hempstead sends out the
11 margin agreement and we send out the margin agreement as
12 well. And so sometimes they do come back to Hempstead,
13 sometimes they come back to us, your Honor.

14 The initial one would come back to the Hewlett
15 branch, though. The initial request.

16 THE COURT: You mean the customer is apt to get
17 one from you and one from Hempstead?

18 THE WITNESS: That's very possible, yes, sir.

19 BY MR. PERLIS:

20 Q Is it possible, then, for a customer of
21 Edwards & Hanley to execute business in a margin account or
22 cash account without you or any registered representative
23 ever having seen that person?

24 A Without me ever seeing them? Yes.

1 THE COURT: Well, in other words, can a fellow
2 go to a registered representative, or telephone him and you
3 have approved the form, and then he says, I want to buy 100
4 shares of American Telephone on margin, does that on the
5 telephone too, do you execute the order?
6

7 THE WITNESS: Yes. I encourage the majority of
8 my account executives to meet their clients, though. I
9 think it is a very healthy practice.

10 Q But you are aware of no Edwards & Hanley
11 requirement that such meeting take place?

12 A I think it's just good business practice, and
13 I think Edwards & Hanley as good businessmen would require
14 it basically.

15 THE COURT: Well, let me ask you this: Supposing
16 a fellow like me calls up Rauch and I say, I want to open
17 a margin account, he says, fine, Type 2. He gets the
18 information on his card and passes it on to you, and I say,
19 by the way, I want to buy 100 shares of American Telephone
20 Company, whatever it is, for 45, whatever it is, and he
21 says, fine. Well, have I got 100 shares of American Telephone
22 Company?

23 THE WITNESS: You wanted to buy some?

24 THE COURT: Yes.

25 THE WITNESS: We would execute the order for you,

yes.

THE COURT: Then what happens? When do you ask me to put up some money?

THE WITNESS: You are going to have to pay within five days, your Honor.

THE COURT: I see.

Q Could I get an extension of payment without coming in to see anyone at Edwards & Hanley in a margin account?

A If there was a valid reason for it, illness, check in the mail.

Q How many extensions could I get?

A Depending upon the nature of the extension.

THE COURT: Supposing I do it and the stock goes down, is that a valid agreement?

THE WITNESS: I would probably sell you out, your Honor.

THE COURT: Then you would be caught, wouldn't you?

THE WITNESS: Well, I mean if -- yes. Yes.

THE COURT: All right, we will take a short recess.

(Recess.)

THE COURT: Proceed.

BY MR. PERLIS:

Q Mr. Rosenfeld, let me just ask you one final question with regard to this area before we leave this area.

It would be possible then for a customer to call a registered representative, telephonically give him the information to be filled in on this new account card, request a margin account be opened, subsequently without having signed a margin agreement in the possession of Edwards & Hanley, execute purchases and sales in the margin account without ever coming in Edwards & Hanley, or Edwards & Hanley ever having a facsimile of his signature; is that correct?

A The account executive is responsible for 100 percent of any loss that has occurred on the new account form.

THE COURT: Well, that doesn't answer the question. All he is asking is whether this could happen. You say it might happen, is that what you say? It might happen and it is up to the registered representative to make good?

THE WITNESS: Yes, sir.

THE COURT: All right.

MR. PERLIS: I would like this document marked.

(SEC Exhibit No. 20 was marked for

identification.)

MR. PERLIS: Your Honor, at this time I would offer Edwards & Hanley Exhibit A and SEC Exhibit No. 2 into evidence.

THE COURT: This is the margin agreement form?

MR. PERLIS: Yes, sir.

MR. GORDON: No objection.

MR. STRUM: I have no objection, your Honor.

THE COURT: They will both be received, then. They are the same thing, I take it?

MR. PERLIS: Yes, your Honor. For Mr. McMahon and Mr. Maione.

THE COURT: All right.

(Defendant Edwards & Hanley Exhibit A and SEC Exhibit 20 was received in evidence.)

BY MR. PERLIS:

Q Mr. Rosenfeld, I show you what has been marked as SEC Exhibit No. 20 and Edwards & Hanley Exhibit A, and I ask if you have ever seen these documents before (handing)?

A The Maione one, certainly. My initial is on it. I couldn't say that I have ever seen McMahon's, no.

Q The Maione document being SEC Exhibit No. 20?

A Yes, 20.

1
2 Q Mr. Rosenfeld, can you tell me, sir, when the
3 Maione account was opened with Edwards & Hanley?

4 A November 1st, 1973.

5 Q Does the margin agreement indicate when that
6 was received by Edwards & Hanley?

7 A It appears to be a time stamp.

8 Q What does that time stamp say?

9 A January 31, 1974, but I don't know where that
10 would come from.

11 Q That would be approximately three months after
12 the opening of the Maione account?

13 THE COURT: The stamp is three months, that is
14 what he is trying to say.

15 THE WITNESS: Yes.

16 THE COURT: Whose stamp is that?

17 THE WITNESS: I don't know, your Honor. I
18 never stamp these agreements in my branch, so I don't know
19 why this one was stamped. I have never seen one stamped.

20 THE COURT: Well, do you recognize that as an
21 Edwards & Hanley stamp?

22 THE WITNESS: It appears to be, yes.

23 THE COURT: All right. Let me see it, please.

24 It has got a stamp and a time. It says 3 some-
25 thing. It is covered over by the Exhibit number.

Is that the form of stamp you use?

THE WITNESS: Yes, we time stamp orders that way.

THE COURT: All right.

BY MR. PERLIS:

Q Now, sir, can you tell me on what date the McMahon account was opened?

A August 30, 1973.

Q Is the McMahon margin agreement also dated?

A It is dated 12/24/73.

Q Now, sir, at the Hewlett office do you bear the ultimate responsibility of seeing to it that those agreements are signed?

MR. GORDON: Objection.

THE COURT: I didn't quite understand that question.

Mr. Reporter, will you read that question, please?

(Question read.)

THE COURT: Margin agreements are signed.

MR. GORDON: Objection.

THE COURT: I will let him answer that.

Is that the responsibility of your office, to see that that is signed?

THE WITNESS: This is one of my responsibilities.

THE COURT: All right.

BY MR. PERLIS:

Q Did you receive any notices from your margin department to the effect that they had not had signed margin agreements for either of those two accounts?

A I don't recall specifically, but I'm sure I did, yes.

Q Do you have any recollection of speaking with Mr. Rauch with reference to obtaining those agreements?

A I'm positive I did, yes.

Q But you have no recollection of it?

A No.

Q Do you have any recollection of any explanation Mr. Rauch might have given you as to why those agreements had not been signed?

A None whatsoever.

Q To your knowledge, sir, were transactions executed in either or both of those accounts prior to the receipt of signed margin agreements by Edwards & Hanley?

A Yes.

THE COURT: I take it by transactions you mean margin transactions?

MR. PERLIS: Yes, sir.

THE WITNESS: The only explanation I might give

1 on the McMahon account is there were a tremendous amount of
2 accounts transferred over, transferred in at one particular
3 time, and there was some confusion pertaining to the agree-
4 ments, the heavy influx. That's the only explanation I can
5 think of.
6

7 Q Sir, do you have any recollection as to the
8 date of the first transaction in the Maione account?

9 A No, I don't.

10 Q Would the date November 2nd, 1973 refresh your
11 recollection?

12 THE COURT: The answer is, you don't know?

13 THE WITNESS: I don't know.

14 THE COURT: All right.

15 Q Do you have any recollection, sir, as to the
16 date of the first transaction in the Maione account?

17 A No, I don't.

18 Q Mr. Rosenfeld, does Edward & Hanley have any
19 procedure with respect to registered representatives
20 contacting officers, directors or employees of companies
21 whose stock are in either personal or customer accounts?

22 A Yes.

23 Q What are those procedures, sir?

24 A Branch manager approval is necessary.

25 Q For what?

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A To contact companies.

Q When were these procedures instituted, sir?

A Well, they clarified them in March of '74, to be perfectly frank, and prior to that I would say that I knew just about every time a man would call up a company, but not -- I couldn't swear on that.

Q But prior to March were there any written procedures with respect to such contact?

A Yes. They couldn't call up the company, a company representative himself, as Edwards & Hanley, couldn't call up a company representing himself as an investment advisor, or an analyst, but basically could call up in the normal function of public relations, explanation of a press release or to speak to somebody. He could call up, yes. As long as he represented himself as an account executive and nothing else but.

THE COURT: Were these written regulations?

THE WITNESS: Yes, sir.

Q Did you ask Mr. Rauch to apprise you of any contacts, or visits he might make to any company in which he had a stock interest in customer or personal accounts?

A Did I ask Mr. Rauch --

Q To inform you prior to making any phone calls or visits to any companies.

1 A No. Mr. Rauch has his own compliance manual,
2
3 and whatever the rules were would be in the compliance
4 manual. He had responsibility to read that and be familiar
5 with what our guidelines were.

6 Q I understand, though, that you said there were
7 no guidelines with respect to a registered representative
8 calling a company as a registered representative.

9 A As long as he represented himself as a
10 registered representative seeking explanation, or whatever
11 it was that he was looking for.

12 THE COURT: Did you say something about there
13 was a revision in March 1974?

14 THE WITNESS: They clarified it in March 1974.

15 THE COURT: Did that have anything to do with
16 this case?

17 THE WITNESS: I would think so, yes.

18 THE COURT: It did. But can a registered
19 representative call up a company and say, I hear you are
20 going to have a directors' meeting, are you going to declare
21 a dividend?

22 THE WITNESS: No. The only difference in the
23 March directive, your Honor, was to make certain that he
24 obtained branch manager approval, and that was just the
25 only difference.

1 69CMD
2 Q Were you aware of the contacts Mr. Rauch might
3 have had with Geon Industries during the period of his
4 employment at Edwards & Hanley?

5 MR. STRUM: Your Honor, I'm going to object to
6 any testimony along the lines of what Mr. Rauch may have
7 told Mr. Rosenfeld about contacts or conversations with
8 Geon. It's not only --

9 THE COURT: I will take it not for the truth of
10 it, but if he said anything about it, I will consider this.

11 Did he talk to you about Geon?

12 THE WITNESS: Yes, your Honor.

13 MR. PERLIS: Your Honor, it is the position of
14 the SEC these would not only be admissions --

15 THE COURT: Well, I'm not ruling on that. I am
16 not ruling on the truth of it at all, but I will let him
17 answer whether Rauch said anything to him about Geon.

18 BY MR. PERLIS:

19 Q Were you aware of contacts Mr. Rauch might have
20 had with any officers or employees of Geon Industries?

21 THE COURT: Well, wait. I will sustain an
22 objection to that question. But you say that Rauch talked
23 to you about Geon?

24 THE WITNESS: Yes, your Honor.

25 THE COURT: What did he tell you?

1 THE WITNESS: About the prospects of the
2 company. About the fundamentals. About the future. About
3 the growth prospects.
4

5 Mr. Rauch was tremendously familiar with the
6 company, your Honor.

7 THE COURT: Did he tell you how he knew all
8 these things?

9 THE WITNESS: He had a portfolio of information
10 put together, annual reports, any report that was ever
11 written on Geon Industries. Recommendations, Standard &
12 Poor, Moody's. He had everything that was ever written on
13 the stock.

14 THE COURT: All right.

15 Did he tell you anything else? Was there any
16 other basis for his knowledge that you know of other than
17 the Standard & Poor's reports and --

18 THE WITNESS: No, your Honor.

19 THE COURT: That's all he said?

20 THE WITNESS: Yes, your Honor.

21 BY MR. PERLIS:

22 Q Did Mr. Rauch ever tell you that he had spoken
23 to anybody at Geon?

24 A Yes.

25 Q When did you first learn that he had spoken to

someone at Geon?

A I would say sometime perhaps in the negotiation. Perhaps in September, October. I'm not -- I really don't recall.

Q Do you know to whom he spoke? Did he tell you?

THE COURT: Did he tell you who he spoke to?

THE WITNESS: I know he spoke with George Neuwirth at the company.

THE COURT: He told you that?

THE WITNESS: Yes.

Q Did you know who George Neuwirth was at that time?

A At that time perhaps not, but I later found out he was the chairman of the board.

Q Do you know whether Mr. Rauch, or, did Mr. Rauch tell you whether or not he had visited the company prior to--

A No, he never told me that.

Q He never told you that?

A No.

Q Once again, sir, do you recall testifying before the American Stock Exchange on March 1, 1974?

A Yes, I do.

Q Line 2 on page 13, I'm going to read to you a question and answer and ask if you recall the question and

answer?

MR. GORDON: Just a moment, Mr. Perlis, please.

MR. PERLIS: Certainly, sir.

MR. GORDON: What was the line number, again?

MR. PERLIS: 2.

Q "Q Did you ever inquire of him" referring to Mr. Rauch, "as to whether or not he had ever visited the company?

"A In conversation it came out that he had been out to the company. He had an extensive position and a very large position in it, and he had visited the company. It was mentioned in the conversation, I don't know how, and at what place it came about. I don't remember asking him. I don't think I did."

MR. GORDON: Your Honor, that is not inconsistent. The previous question was whether there was a particular time for this conversation. This just says that he knew it.

THE COURT: You have made your point. All right. You have made your point.

MR. PERLSTEIN: I would ask your Honor, again on page 12, for clarification, line 13:

"Q During the period of May-June until the time he joined you, which I will call the negotiating period, did Mr. Rauch ever tell you that he had visited

2 Geon Industries?

3 "A He may have. He may have said he was out to
4 the company, yes."

5 A He may have. I don't believe he did, but he
6 may have.

7 Q Did Mr. Rauch tell you whether he spoke to
8 anyone else aside from Mr. Neuwirth at the company?

9 A No, that's the only party I would have known of,
10 or did know of.

11 Q Do you know whether or not, or, did Mr. Rauch
12 tell you whether or not he contacted any people at Geon
13 Industries, including Mr. Neuwirth, during the period when
14 he was employed by Edwards & Hanley?

15 A I think he did, yes.

16 Q Did you ask him to report to you any information
17 that he was furnished by Mr. Neuwirth or whoever he spoke to
18 at the company?

19 A I don't think he had any informatior --

20 THE COURT: Well, you can answer the question.
21 Did you say, if you get anything out of Neuwirth, will you
22 let me know?

23 THE WITNESS: I believe the call was to clarify
24 what the energy crisis would mean, and that's about all.
25 That's it. So he would come back and say, perhaps

2 Mr. Neuwirth said that or said this, I don't know.

3 MR. STRUM: Your Honor, I do object generally
4 to any testimony concerning what Mr. Rauch reported
5 Mr. Neuwirth said.

6 THE COURT: Well, as I indicated, I am not
7 accepting it for the truth of what he might have said, I
8 am just accepting it from the point that he can testify that
9 Rauch told him he talked to Neuwirth and Neuwirth said so
10 and so, if that happened.

11 THE WITNESS: I knew Rauch spoke to Neuwirth,
12 yes.

13 Q Do you know about how many times he spoke to
14 Neuwirth during his employment at Edwards & Hanley?

15 A No, I don't.

16 Q Would it be more than once?

17 A Once or so that I can remember. That's all I
18 would know. I'm not sure. I told him on one occasion to
19 call Mr. Neuwirth myself.

20 THE COURT: Why did you ask him to call Neuwirth?
21 What were you interested in?

22 THE WITNESS: Well, to clarify a point regarding
23 the possible merger between Burmah and Geon, whether there
24 would be a solicitation fee.

25 We just couldn't seem to get an answer, and it

was of great importance.

THE COURT: How do you mean whether there would be a solicitation fee?

THE WITNESS: A fee for the soliciting of the shares. They usually pay a tender fee. And it would mean a great deal of commissions to Mr. Rauch, and he was very interested in whether there would be or would not be.

THE COURT: So you said, call Neuwirth and find out?

THE WITNESS: Well, he used to almost on a daily basis, ask if I knew, what I thought, and I even went to my firm and asked what they thought, if there would be. And it got to the point where it became almost like a nuisance, and I said, look, if you want to find out, call Neuwirth or call up the company, however I expressed it.

THE COURT: Did he report to you that he had?

THE WITNESS: I don't remember, your Honor. I don't think so.

THE COURT: You don't know?

THE WITNESS: I don't recall.

BY MR. PERLIS:

Q You requested him to call Neuwirth?

A I said it like sarcastically, facetiously, yes.

Q But it is your testimony, sir, that you never

1 asked Mr. Rauch to report to you with respect to any conver-
2 sation he might have had with anyone at the company?

3
4 MR. GORDON: Your Honor, I think that has been
5 asked and answered.

6 THE COURT: I think we have had that, yes. I
7 will sustain the objection.

8 Q After Geon was cleared for solicitation by your
9 research department --

10 THE COURT: After what? I didn't hear the first
11 part. After Geon did what?

12 MR. PERLIS: Was cleared for solicitation by the
13 research department at Edwards & Hanley.

14 Q (Continuing) Did you personally solicit customer
15 purchases in Geon?

16 A Yes.

17 Q When did that begin, sir?

18 A October 1973.

19 Q To your knowledge did Mr. Lynn also solicit
20 purchases in Geon?

21 A Yes.

22 Q Did Mr. Lynn ever tell you when that began?

23 MR. GORDON: Your Honor, Mr. Lynn is the next
24 witness. I think we can move along faster that way.

25 THE COURT: Yes, I think that's right.

MR. PERLIS: Certainly, your Honor.

Q Were you aware of other registered representatives at the Hewlett office also soliciting purchases of Geon?

A Yes.

Q Did you speak to Mr. Rauch regularly about Geon Industries stock?

A No.

Q How often would you say you discussed it between yourselves?

A I have no recollection whatsoever.

Q To your knowledge did other registered representatives speak to Mr. Rauch about Geon Industries?

A Yes.

Q Was Mr. Rauch considered the man in the office on Geon?

A Yes.

Q What were the nature of the questions that you would speak to him about?

THE COURT: What was that question?

Q What were the nature of the questions, or, what was the nature of the conversation between you and Mr. Rauch about Geon when you had these conversations?

A Mostly tape action. Fundamentals don't change that often.

2 Q Did Mr. Rauch ever speak to you about corporate
3 developments?

4 A Only -- no -- only what was public.

5 THE COURT: I think we are beating around the
6 bush.

7 Did you and Rauch talk about this proposed
8 acquisition by Burmah of Geon?

9 THE WITNESS: Only after the announcement, your
10 Honor.

11 THE COURT: Well, they did announce it in
12 principal. At some point you talked to him about it?

13 THE WITNESS: Yes. Certainly.

14 THE COURT: All right.

15 Q Would you characterize Rauch as exceedingly
16 bullish about Geon?

17 A Yes.

18 THE COURT: If he was exceedingly bullish, did
19 he talk to you about it on February 21 or 22? Was he
20 bullish on February 21 or 22?

21 THE WITNESS: Yes.

22 THE COURT: He still was bullish?

23 THE WITNESS: Yes.

24 THE COURT: Did he ever tell you he was bearish?
25 Did he ever tell you he didn't think this deal was going

through?

THE WITNESS: I don't believe so, your Honor.

THE COURT: You don't remember that.

Q To your knowledge, Mr. Rosenfeld, did Mr. Rauch purchase a significant quantity, a large quantity of Geon securities --

MR. GORDON: I think that is objectionable --

THE COURT: I think we have been all through it. I think you have got to limit that to a period.

You are talking about for his own account while he was at Edwards & Hanley, or are you talking about purchases for his customers, or --

MR. PERLIS: I was going to limit it, your Honor.

THE COURT: Well, let's not get into the broad questions.

Do you know whether Rauch purchased stock for his own account in Geon while he was working for Edwards & Hanley?

THE WITNESS: Yes.

THE COURT: How much did he buy?

THE WITNESS: A good few thousand shares, your Honor.

THE COURT: A good few thousand shares?

THE WITNESS: Yes, sir.

THE COURT: He had a lot of stock when he came?

THE WITNESS: Yes, sir.

THE COURT: As far as you know, did he ever sell it?

THE WITNESS: No, your Honor.

THE COURT: Not as far as you know. Well, did he purchase a lot of Geon stock for his customers?

THE WITNESS: I'm sorry, your Honor. Was the question did he ever sell for himself only or --

THE COURT: Yes.

THE WITNESS: No, except the last day.

THE COURT: Except the last day?

THE WITNESS: Yes.

THE COURT: Did he purchase quite a lot of Geon stock for his customers while he was at Edwards & Hanley?

THE WITNESS: Yes, your Honor.

THE COURT: All right.

BY MR. PERLIS:

Q Mr. Rosenfeld, did there come a time when you received a directive from Edwards & Hanley concerning Geon Industries?

A No.

Q Did you ever receive any directive or instructions from Edwards & Hanley concerning Mr. Rauch's position in

2 Geon Industries?

3 A I received guidelines from Edwards & Hanley.

4 THE COURT: With respect to Mr. Rauch?

5 THE WITNESS: With respect to the position of
6 Geon Industries and Mr. Rauch, yes.

7 THE COURT: What were they?

8 THE WITNESS: Well, there were two different
9 periods. There was a period in October where I like to
10 think of it as what is called an amber light period where
11 they flashed like a caution sign to me.

12 THE WITNESS: Who is they?

13 THE WITNESS: Edwards & Hanley.

14 THE COURT: Is that the office out in --

15 THE WITNESS: I received a call from Mr. Gilbert
16 and Mr. Patti --

17 THE COURT: That is in Hempstead?

18 THE WITNESS: Yes.

19 THE COURT: They sent you a warning letter,
20 Hempstead?21 THE WITNESS: They called me and asked me if I
22 was aware of the growing position, accumulation of stock in
23 Geon Industries. I said, yes, I was. They said, very
24 simply, just be careful.

25 Then in mid-November to late November, approxi-

1
2 mately, it became a much stronger type of guideline.

3 THE COURT: Well, the first one was a warning.

4 THE WITNESS: The first one was a caution.

5 Actually just a question if I was aware --

6 THE COURT: What happened at the next one, did
7 the light turn red?

8 THE WITNESS: Yes, sir, it did. The price of the
9 stock had declined in value and there was the threat, and
10 there was the realization of maintenance calls being sent
11 to the Geon accounts, and at that specific time I spoke to
12 quite a few other people in the firm who gave me a little
13 bit more specific guidelines to follow.

14 THE COURT: Well, you called these things guide-
15 lines. They were worried, they were telling you to look out;
16 is that right?

17 THE WITNESS: Yes, your Honor.

18 THE COURT: All right.

19 BY MR. PERLIS:

20 Q Now let's start in the October period when you
21 received what you characterized as a caution.

22 A Yes.

23 Q With whom did you speak at that time and, if
24 you can, approximate when in October?

25 A I would say Mr. Gilbert was calling on behalf of

Mr. Edwards and Mr. Patti.

Q Did you ever speak to Mr. Edwards directly?

A I don't recall in October.

Q What did Mr. Edwards say?

A No.

Q What was the nature of the caution that they flashed to you in October?

A I think I just stated that.

THE COURT: He just stated that. He said, be careful.

Q Did they request you to take any affirmative action?

A No. Just be careful.

Q Did you take any affirmative action?

A No.

Q Were you careful?

THE COURT: Wait a minute. I will sustain an objection to that.

Did Mr. Rauch to your knowledge continue soliciting purchases of Geon during this October period after these guidelines came out? Not the guidelines, the caution?

THE WITNESS: Yes.

Q Same as prior to the caution --

THE COURT: No, no. Let's leave it. He got the

1 84CMd
2 caution. He says that Rauch was still buying Geon stock;
3 is that right?

4 THE WITNESS: Yes, your Honor.

5 THE COURT: All right. Then what happened when
6 the light turned red? Whenever that was? Was that Gilbert?

7 THE WITNESS: That was Mr. Gilbert, Mr. Patti,
8 Mr. Edwards, Mr. Zollner.

9 THE COURT: They all said look out. What did
10 you do then?

11 THE WITNESS: I looked out. I watched it.

12 THE COURT: How did you do it?

13 THE WITNESS: What I did, I called Mr. Rauch and
14 Mr. Lynn in, I spoke to Mr. Rauch, I spoke to Mr. Lynn,
15 whether I called them in or not, and told them that there
16 were certain guidelines that we'd have to adhere to.

17 THE COURT: What were they?

18 THE WITNESS: There were a few of them. If we
19 wanted to continue to accumulate this stock. The, I'd say
20 the main theme of the --

21 THE COURT: No, I'm not interested in the main
22 theme. I'm more interested in what they told you to do or
23 not to do.

24 THE WITNESS: Well, the main thrust was to make
25 sure that if the stock declined in value, if the stock

1 declined where we would have to count the stock as zero,
2 that these margin accounts would be strong enough to support
3 themselves.
4

5 Basically I should look at these accounts and
6 price Geon at zero and make sure that they would be strong
7 enough. That basically would be one of them.

8 And I should know my client. To question
9 Mr. Rauch and to make sure that I saw the orders before
10 Mr. Rauch placed them.

11 To make sure that he wasn't using special
12 miscellaneous buying power to purchase additional shares of
13 Geon. To ask Mr. Rauch, or try to get Mr. Rauch to lighten
14 his position.

15 THE COURT: What did you do when you got these
16 warnings? Did you get Rauch in?

17 THE WITNESS: Yes, sir.

18 THE COURT: What did you tell him?

19 THE WITNESS: I told him just this, I told him
20 I'd have to see every ticket before it went in.

21 THE COURT: Every ticket on Geon?

22 THE WITNESS: Every order ticket, yes.

23 THE COURT: Purchase and sales, both, or --

24 THE WITNESS: Purchase.

25 THE COURT: Just purchase?

1 THE WITNESS: Yes, sir.

2 THE COURT: He could sell without going to you?

3 THE WITNESS: Oh, yes. And we were recommending
4 that he lighten his position, and we thought it would be the
5 right thing to do for his clients and for himself. And that
6 on margin accounts he would have to assure me that the money
7 would be in on settlement date.
8

9 THE COURT: Did you know what his position was
10 in Geon at the time the red light was flashed?

11 THE WITNESS: No, your Honor, I didn't.

12 THE COURT: You don't know?

13 THE WITNESS: No.

14 THE COURT: You didn't ask him?

15 THE WITNESS: No, sir.

16 THE COURT: So what happened when the red light
17 flashed was, don't buy any Geon until I have approved the
18 ticket; is that right?

19 THE WITNESS: Yes, sir.

20 THE COURT: Did you approve any tickets?

21 THE WITNESS: Yes, sir.

22 BY MR. PERLIS:

23 Q Were you instructed not to add to your position
24 in Geon if possible?

25 A Try not to add, yes.

1
2 Q Were you also instructed that if any extensions
3 were to be given in the margin account that you yourself
4 would have to become personally involved as to checking out
5 the nature of the extension and to try to contact the
6 customer if possible?

7 A And I would have to get a little more involved,
8 yes.

9 Q Did you purchase Geon securities for your own
10 account in November of 1973?

11 A Yes.

12 Q November 2nd?

13 A Yes.

14 THE COURT: When was this in relation to the
15 amber light? Was it before or after?

16 THE WITNESS: This was after.

17 THE COURT: You got the amber light and you
18 bought some Geon?

19 THE WITNESS: Yes.

20 THE COURT: All right. How much did you buy?

21 THE WITNESS: I think 575 or 550 shares at that
22 time.

23 BY MR. PERLIS:

24 Q To your knowledge did Mr. Lynn also purchase at
25 that time for his own account?

1 88CMD
2 A His own account?

3 Q Yes.

4 A I don't know what he did for his own account.

5 Q Did you take these guidelines into consideration
6 with respect to your own November 2nd purchase?

7 THE COURT: Well, I think I'm not going to ask
8 him to answer that. All I have got is on November 2nd after
9 the warning light had been flashed by Gilbert and these
10 other people he went out and bought 500 shares of Geon; is
11 that right?

12 THE WITNESS: Yes, sir.

13 THE COURT: All right.

14 Q Had the red light been flashed at that time?

15 A No, sir.

16 Q Do you recall testifying before the Securities &
17 Exchange Commission on March 5, 1974?

18 A Yes.

19 Q I'm referring now to page 28, line 12. I will
20 ask if you recall the following questions and answers:

21 "Q What type of format does this represent-
22 ation from Edwards & Hanley take? Is it a directive? Is
23 it a suggestion? Is it a caution?"

24 MR. GORDON: Your Honor, I object to the reading
25 of the answer on the grounds the question is improper for

1 presentation to this Court. They can do whatever they want
2 across the street, but that kind of a question is obviously
3 improper.
4

5 THE COURT: Well, I agree with all that. That
6 is perfectly true. But the witness testified he thought
7 this was -- I take it this was the yellow light, wasn't it?
8 You treated it as a directive, a suggestion and a caution,
9 is that right? Is that the way you treated it?

10 THE WITNESS: I took it as just very simply,
11 just be careful, cautious. That's all.

12 THE COURT: All right.

13 THE WITNESS: That's the way I interpreted it.
14 It was verbal.

15 THE COURT: All right.

16 MR. PERLIS: May I continue, your Honor?

17 THE COURT: All right.

18 Q "A I think it's all three."

19 THE WITNESS: That's right.

20 Q "Q Is it not to buy more or is it to lighten
21 the position?

22 "A It's to lighten the position if possible
23 and to only buy more under certain guidelines.

24 "Q Did you consider the guidelines when you
25 were buying on behalf of your wife's account or your account

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Mr. Rosenfeld?

"A Yes."

A Yes, I did.

THE COURT: Well, that's all, he just said all the same things. So I don't know why we have to read it all in.

Q How frequent were your communications when the red light flashed in November with Mr. Edwards, Mr. Aaronzon and Mr. Patti --

A Daily.

Q Daily?

A Yes.

Q During this period did Mr. Rauch continue, during the red light period, did Mr. Rauch continue to solicit Geon purchases for the customer accounts?

A Yes.

Q Margin accounts as well?

A Yes.

THE COURT: He would bring the tickets to you; is that right?

THE WITNESS: Yes, sir.

THE COURT: And the order wouldn't be executed until you had indicated they were okay; is that right?

THE WITNESS: Yes, your Honor.

1 THE COURT: And did his position increase during
2 this period?
3

4 THE WITNESS: Yes, your Honor.

5 THE COURT: By how much?

6 THE WITNESS: I don't have any --

7 THE COURT: The figures would show, but you
8 don't know?

9 THE WITNESS: I don't know, sir.

10 BY MR. PERLIS:

11 Q Were these guidelines ever reduced to writing?
12 I'm talking now about the red light period.

13 A No.

14 Q Did you ever inform others in the office about
15 these sets of guidelines?

16 A I may have. There was only Mr. Lynn and
17 Mr. Rauch that were purchasing the security.

18 Q Did there ever come a time when you were
19 informed that these restrictions that were given you in late
20 November, or guidelines, were no longer in effect?

21 A Not in so many words, but they weren't because
22 the price of the stock had appreciated back to around the
23 12, 12-1/2 dollar level, and an announcement had come out on
24 Geon and Burmah and the stock looked quite stable at that
25 particular time.

1
2 Q And this was in --

3 THE COURT: What was the stock selling at when
4 you got the amber light?

5 THE WITNESS: I would say 11-1/2, 12.

6 THE COURT: What was it selling at after you got
7 the red light?

8 THE WITNESS: 9.

9 Q Were these guidelines in effect either on
10 November 6th or November 9th, 1973, if you recall?

11 MR. GORDON: Which guidelines?

12 MR. PERLIS: The red light guidelines.

13 A No, I don't believe they were.

14 Q At the time you received the November guidelines
15 did you undertake to review the Geon position in all
16 Mr. Rauch's margin accounts?

17 A I'm sorry, could you repeat that, please?

18 THE COURT: When you got the red light did you
19 review how many shares Rauch had for himself and his
20 customers?

21 THE WITNESS: I reviewed any new request to
22 purchase the security, I reviewed those accounts.

23 THE COURT: No, I mean, did you review how much --

24 THE WITNESS: No, I think the firm had informed
25 me, and the firm was well aware of the position.

1
2 THE COURT: All right.

3 Q Did Mr. Rauch ever speak to you with regard to
4 extensions of time for payment in the margin account of
5 Mr. Louis Maione?

6 A I don't have any recollection of it at all.

7 THE COURT: You don't recall any?

8 THE WITNESS: No, sir.

9 THE COURT: All right.

10 Q Does an individual registered representative
11 have the authority to grant such extensions without consult-
12 ing you?

13 A Absolutely no.

14 Q So he would have had to come to you with --

15 A Either myself or Mr. Lynn, yes, through my
16 secretary. It works through my secretary.

17 Q Did you ever become aware as to whether or not
18 there were extensions of time granted in the Maione account?

19 A Only recently.

20 Q Do you recall ever inquiring of Mr. Rauch why
21 the extensions were to be granted?

22 A I'm sure I did, but I don't recall it.

23 Q Do you recall Mr. Rauch ever telling you that he
24 could not contact the customer?

25 A I don't recall. He would have to give me a reason

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2 for obtaining the extension, so I don't know what the reason
3 was, or what the reason was he gave. Could have been any
4 one of a few.

5 Q Did you make any attempt to personally verify
6 any reasons given by registered representatives for
7 extensions in --

8 MR. GORDON: Wait a minute. What period --

9 THE COURT: Yes, that was too broad a question,
10 but I think I will let him answer whether when Rauch, if he
11 came to you, did he come to you and tell you about extensions?

12 THE WITNESS: Yes, and he would --

13 THE COURT: All right. Well, now, on those
14 occasions, did you verify the information that he gave you
15 to justify the extension?

16 THE WITNESS: No, he would give me the assurances.

17 THE COURT: Then he didn't?

18 THE WITNESS: No.

19 THE COURT: All right, the answer is no.
20 You were acting on his assurances?

21 THE WITNESS: Yes, sir.

22 THE COURT: All right.

23 BY MR. PERLIS:

24 Q During the period when you instituted the
25 practice of reviewing daily the order tickets that Mr. Ruach

submitted for Geon securities, did you tell Mr. Rauch to stop soliciting Geon altogether?

A I tried to get him to hold back and to stop, yes.

Q Did Mr. Rauch refuse?

THE COURT: You didn't direct that he stop?

THE WITNESS: No.

THE COURT: You asked him to stop?

THE WITNESS: I asked him to stop.

THE COURT: What did he say?

THE WITNESS: He said he didn't see any cause to stop as long as he met our guidelines.

THE COURT: He what?

THE WITNESS: He didn't see any reason why he had to stop, or should have to stop as long as he went at it from a research level and back office standpoint.

Q Did you ever receive any calls from back office at Edwards & Hanley during this red light period in November with respect to Mr. Rauch's continued purchasing of Geon?

A I believe so, yes.

THE COURT: That's from Gilbert?

THE WITNESS: Perhaps Gilbert, perhaps Mr. Patti.

Q What did they tell you to do, if anything?

A Just to make sure that I was aware of what he was doing, and that it was suitable for the accounts and how

1 it was being purchased.

2 Q Did they ever again tell you to urge him to
3 lighten up and stop accumulating?

4 A That was constant, yes.

5 Q Did you stop reviewing Mr. Rauch's order tickets
6 sometime after the December 3rd announcement with respect
7 to Geon?

8 A Yes.

9 Q So that the time period in which you were
10 reviewing the tickets was about two to three weeks?

11 A Perhaps, yes. Just about.

12 THE COURT: During that period you were reviewing
13 the tickets, was he the number one boy at that time?

14 THE WITNESS: I don't believe so, your Honor.

15 Q Did Mr. Rauch ever threaten to go elsewhere,
16 or quit if he were not permitted to continue the solicitation
17 of Geon?

18 THE COURT: Wait a minute. These long-winded
19 questions. You are asking, did Rauch ever tell you he was
20 thinking of going some other place?

21 THE WITNESS: No.

22 Q Calling your attention to your purchase of Geon
23 Securities on November 2nd, 1973, why did you purchase Geon
24 at that time, Mr. Rosenfeld?
25

1
2 A I had the company with the stock. It looked
3 like an interesting growth situation. Fundamentals looked
4 quite sound. The energy crisis I thought would be quite
5 helpful to the security.

6 We had just seen an institutional report that
7 was quite bullish on it, and I think the institutional
8 report was what pushed me into the stock, so to speak.

9 Q Was that the Coenen report?

10 A Yes.

11 Q When did that report come out, if you recall,
12 sir?

13 A Late October.

14 THE COURT: The stock was selling around 11,
15 11-1/2 then?

16 THE WITNESS: Approximately, sir, yes.

17 Q Prior to your November 2nd purchases did you
18 have any conversations with Mr. Rauch regarding a big deal
19 that might be cooking at Geon?

20 A No.

21 Q Does Edwards & Hanley have any procedures with
22 respect to the receipt of third party checks in payment of
23 amounts due in customer accounts?

24 A As long as they are properly endorsed, we can
25 accept them. Endorsed, to the account of.

1 98CMD
2 Q Are there any procedures with respect to the
3 receipt of cash in payment of balances due in customer
4 accounts?

5 A Yes.

6 Q What are those policies and procedures?

7 A If I'm not mistaken, if it's not 25 \$100 bills,
8 if it's -- if it's more than 25 \$100 bills, or if -- at that
9 time it was \$10,000, now it's \$5,000, all we have to do is
10 give a receipt. 25 \$100 bills, or \$500 or more have to be
11 reported to Mr. Saber in our back office.

12 Q When was the amount lowered from \$10,000 to
13 \$5,000, sir?

14 A I don't recall. Recently, I think.

15 Q Was it in response to the difficulties with
16 respect to Geon that occurred in February?

17 A Absolutely not.

18 THE COURT: What is the purpose of reporting
19 this to the back office?

20 THE WITNESS: Internal Revenue, sir.

21 THE COURT: The tax problem?

22 THE WITNESS: Yes, sir.

23 THE COURT: What do you do, file an information
24 return?

25 THE WITNESS: Yes, sir.

MR. PERLIS: May this be marked, please?

(SEC Exhibit No. 21 was marked for identification.)

THE COURT: Are you offering this in evidence?

MR. PERLIS: Yes, your Honor.

MR. GORDON: We object, your Honor. There is no authentication of this document.

THE COURT: All right. Well, we will show it to the witness.

Mark it for identification.

BY MR. PERLIS:

Q Have you ever seen that document before, sir (handing)?

A No.

Q Sir, this is a check made out to Edwards & Hanley in the amount of \$2,571 dated November 16, 1973, made out by James McMahon.

Does Edwards & Hanley's stamp appear on the back of that check?

A I can't read what it says.

THE COURT: Well, is that an Edwards & Hanley stamp?

THE WITNESS: No. The account number would be right here (indicating).

1
2 Q No, I'm asking you about this right here, where
3 it says -- can you read that?

4 A Oh, yes, I didn't see that myself. Peninsula
5 National Bank, Edwards & Hanley.

6 THE COURT: Is that your bank?

7 THE WITNESS: Yes.

8 THE COURT: So that is your stamp?

9 THE WITNESS: Yes.

10 THE COURT: All right.

11 MR. GORDON: I will withdraw my objection.

12 THE COURT: Thank you.

13 (SEC Exhibit No. 21 was received in evidence.)

14 BY MR. PERLIS:

15 Q Mr. Rosenfeld, do you review the payments
16 received by Edwards & Hanley at the Hewlett office on a
17 daily basis to see what money comes in?

18 A I am responsible for it.

19 Q Are you aware, sir, whether or not that check
20 was given in payment for Geon purchases in the Maione account
21 in November?

22 THE COURT: It seems to me this is so vague,
23 I think there must be much easier ways of proving from the
24 records of Edwards & Hanley --

25 MR. GORDON: I just told him I would stipulate to

2 that, your Honor.

3 THE COURT: We are wasting a lot of time with
4 that, I think. I'm sure that can be established.

5 Q Sir, does that check have the endorsement that
6 you spoke about before with respect to third party checks?

7 THE COURT: What does that question mean? I
8 don't understand.

9 MR. PERLIS: I believe Mr. Rosenfeld testified
10 that third party checks were accepted by Edwards & Hanley --

11 THE COURT: That's right. As long as they were
12 endorsed with the account number, as I understand.

13 THE WITNESS: This particular check is made out
14 to Edwards & Hanley, and it --

15 THE COURT: And signed by McMahon.

16 THE WITNESS: Yes. The maker. And then there
17 is a memo, for the account of -- oh, that doesn't say, "the
18 account of," but for --

19 THE COURT: This isn't a third party check, this
20 is the check of a customer.

21 THE WITNESS: This is a check from a customer
22 made payable to Edwards & Hanley that is being deposited in
23 this particular account.

24 Q The customer who wrote --

25 THE COURT: This isn't a third party check.

MR. PERLIS: Yes, it is a --

THE COURT: McMahon was a customer.

MR. PERLIS: Correct, your Honor.

THE COURT: But your contention is it may develop some other place -- well, how would he know? He knows he had a customer, McMahon, and this is a McMahon check. Now you can bring out, if you want to, that was on somebody else's account.

MR. PERLIS: I believe that was the stipulation, your Honor.

THE COURT: All right.

MR. GORDON: Your Honor, I don't know whether there was an answer to the question of whether there is the required endorsement on that check. I don't recall if the witness answered that question.

THE WITNESS: This is not the type of check that I was referring to.

MR. GORDON: All right.

BY MR. PERLIS:

Q So that there are no procedures with respect to one customer of Edwards & Hanley writing checks in the payment of account of other customers?

A A check is made out to Edwards & Hanley, I can't picture anybody just --

1 THE COURT: I think what he was talking about
2 was a procedure where the check is made out to Joe Doakes
3 and Joe Doakes endorses it payable to Edwards & Hanley. I
4 think that is what he was talking about.

5 THE WITNESS: Yes, I was, your Honor.

6 THE COURT: You say in this case the check is
7 made out to Edwards & Hanley, so that's quite different.

8 THE WITNESS: Yes, sir.

9 Q So that there is no procedure or policy with
10 respect to checks made out to Edwards & Hanley as to whether
11 or not the maker of the check is the person in whose account
12 the stock has been purchased?

13 A No, because somebody wants to put money into
14 somebody else's account, I wouldn't know and I don't see the
15 problem.

16 THE COURT: Well, anyway, there are some pro-
17 cedures. Let's move along.

18 Q Who is Ivan Boesky, sir?

19 A Partner in charge of our Arbitrage Department.

20 Q Did there come a time when you became aware that
21 Mr. Boesky was purchasing Geon securities for the Arbitrage
22 Department?

23 A Was there a time?

24 Q Yes.

1
2 A Yes.

3 Q When did you become so aware?

4 A Completely aware and absolutely sure, on
5 February 22.

6 Q Had you ever been contacted by Mr. Boesky prior
7 to February 22?

8 A Yes.

9 THE COURT: Where is the Arbitrage Department?

10 THE WITNESS: It works out of 1 Whitehall Street,
11 in the city, your Honor.

12 Q Prior to February 22, 1974, did Mr. Boesky ever
13 indicate to you his interest in Geon securities?

14 A He had interest in any type of Arbitrage
15 situation, yes.

16 Q Did you inquire of Mr. Boesky whether or not he
17 was actively soliciting, or actively purchasing Geon stock?

18 A Yes.

19 Q What was Mr. Boesky's response to you?

20 A Basically he wouldn't answer me. Very vague,
21 and I couldn't get an answer from him.

22 Q Mr. Boesky's also a partner at Edwards & Hanley?

23 A Yes, sir.

24 Q Did you subsequently determine when Mr. Boesky
25 began to purchase his Geon securities?

2 A No.

3 Q Did you ever determine whether or not Mr. Boesky
4 was purchasing Geon at the same time as Edwards & Hanley
5 account executives were soliciting Geon for their customer
6 accounts.

7 A I was never sure that Mr. Boesky was ever
8 purchasing any security, so I couldn't have known that, no.

9 Q Solicitation of purchases of Geon in customer
10 accounts continued throughout December and January and
11 February, until February 21, let us say, did they not?

12 A Yes.

13 Q And as of February 21 were you aware of
14 Mr. Rauch's overall position with respect to Geon?

15 A Vaguely, yes.

16 Q What number of shares did you believe he had in
17 his and his customer accounts?

18 A I thought approximately 60,000, 70,000.

19 Q Were you then aware of the outstanding float of
20 Geon securities?

21 A I knew it was under the five percent rule.

22 Q No, the question was, did you --

23 A Yes, I was, 1,200,000 shares, I believe.

24 Q Was that the number of shares outstanding?

25 THE COURT: The question is about the floating

supply, I take it?

MR. PERLIS: That's corr

A Yes, I think it was two million two, two million one.

Q Did you become aware on December 3rd, 1973 that Geon was negotiating with Burmah Oil?

A Yes, I became aware of it.

Q And you became aware of it when you saw the announcement, over the broad tape?

A Yes.

Q I believe you previously testified that you had been monitoring during this period all the order tickets of Mr. Rauch prior again to December 3rd, from, say, November 21 to December 3rd, in Geon securities?

A Approximately, yes.

Q Were you aware of the number of Geon securities he had purchased during the period November 21 to November 30, 1973?

A As long as they met the guideline, it was fine, but I don't know the specific amount, if that's what you are asking.

Q Do you recall whether it was just a few hundred or several thousand?

A I don't recall.

Q Did Mr. Boesky ever tell you that he believed that the last two points in the Geon situation belonged to the Arbitrage Department?

A In not so many words. Not quite like that. But the feeling was, and I think it was expressed by Mr. Edwards as well, that the last point or so in an Arbitrage situation such as the Geon deal is too risky for the average client, because it's not signed and it's not sealed, and for one point it's silly for these people to stay in the security.

That's more or less the way it was expressed. The risk reward ratio is completely out of whack.

Q Did Mr. Boesky ever contact you prior to February 22, 1974 and indicate to you that if you ever had Geon to sell that you should show it to him first?

A No, not really. No. I don't recall, but I don't think so.

Q Were you aware that Mr. Rauch purchased an additional 1,000 Geon shares for his own account on February 19, 1974?

A After the fact I was, yes.

THE COURT: You didn't know it at the time?

THE WITNESS: At the time of purchase, no, sir.

Q Did you indicate to Mr. Rauch whether or not you approved of this purchase of 1,000 shares on February 19?

MR. GORDON: Your Honor, he has testified he didn't know about it in advance.

THE COURT: That's right, yes. We are wasting time. Please don't do that. I haven't got the time, so let's go on with something else.

Q What time did you arrive in the office on February 22, 1974?

A Sometime between 9:00 and 9:30.

Q Was Mr. Rauch already there?

A I'm not sure.

THE COURT: You don't recall?

THE WITNESS: I don't recall, sir.

Q Did there come a time when you spoke to Mr. Rauch prior to the opening of the market on February 22?

A Yes.

Q What was the nature of that conversation?

A Mr. Rauch indicated to me that he would like to sell, he was going to sell 1,500 shares of Geon Industries, and would I place the order for him.

Q Is that what would be characterized as -- did he request what would be characterized as special handling of the order?

A Not in Marvin's case, no.

Q But in someone else's case?

2 A Perhaps.

3 THE COURT: How many shares did he want to sell?

4 THE WITNESS: 1,500, your Honor.

5 Q What exactly was he requesting you to do by
6 phoning in the order?

7 A Just phone the order in to the main order room
8 in New York, and that's it.

9 Q What is normally done as far as placing orders
10 to sell?

11 A Well, I would phone the orders in to a
12 Mr. Slavin, and he would accept the orders and either he
13 would take the names and numbers, or -- of the accounts, and
14 then I would go to the order desk, our order desk in Hewlett
15 and stamp them and put them into their respective slots.
16 Or, the account executive would do that, or my secretary
17 would do that.

18 Q Is there another way that orders can be placed,
19 or the standard way that orders are placed at Edwards &
20 Hanley for the sale of shares?

21 A Yes. The account executives walk to our order
22 desk in Hewlett and hand the orders to our teletypist who
23 teletypes the orders in.

24 Q Does the type of procedure which you described
25 first, this special handling, require your approval? *

1 A Yes, mine and Mr. Lynn's.

2 Q Did you inquire of Mr. Rauch why this particular
3 order required special handling on the morning of February 22?

4 A No. It wasn't abnormal.

5 THE COURT: Well, that doesn't answer the
6 question. You didn't inquire?

7 THE WITNESS: No, I did not inquire.

8 THE COURT: All right.

9 Q Did Mr. Rauch give you the order tickets for
10 those 1,500 shares?

11 A I believe he did, yes.

12 Q Did you examine from which accounts they came?

13 A No, I just examined the amount of shares, and if
14 it was filled out properly, unsolicited, solicited, A, B,
15 C, D, whatever is necessary on our slips.

16 Q And you phoned in those orders?

17 A Yes, I did.

18 THE COURT: You said orders. Were there more
19 than one?

20 THE WITNESS: Three orders.

21 THE COURT: Three orders totalling 1,500 shares?

22 THE WITNESS: Yes.

23 Q Were the orders in the McMahon and Maione
24 accounts included in those?
25

2 A Yes.

3 Q Did there come a time on the morning of
4 February 22, 1974, that you became aware that Geon had not
5 opened at 10:00 o'clock?

6 A Yes.

7 Q When was that?

8 A Shortly after 10:00 o'clock.

9 Q How as that brought to your attention?

10 A I don't know if it was Mr. Rauch or Mr. Lynn,
11 but our American Stock Exchange tape was not working that
12 particular day, and the only thing we could go on were the
13 Bunker Ramo machines, and we couldn't get a quote, or, we
14 couldn't get an opening sale on the Bunker Ramo machines on
15 Geon security.

16 I don't know whether Mr. Rauch came into my
17 office or I was walking by, or however it came about, but
18 he said, there's something wrong. What's happening? The
19 stock hasn't opened yet. He said, you call up a Mr. Slavin
20 and see if he could check with the American Stock Exchange,
21 and that's how I became aware.

22 Q Did you check with Mr. Slavin?

23 A Yes, I did.

24 Q What did Mr. Slavin tell you?

25 A Slavin said he would check for me on the floor

of the Exchange, and either came back to me or had me on hold, and informed me that there was an imbalance of orders.

Q What did you understand the imbalance to mean?

A Well, there was some confusion about that. I thought imbalance had no special significance, and that there was no way to determine by that expression how the stock would open. I thought it would open on the upside.

Mr. Lynn thought the stock, because it said imbalance, it would open on the downside. And Mr. Rauch was like in between.

Then at that particular time I think an announcement came out, I think on the Western Union, that Geon had been held up, imbalance of orders. I asked Mr. Slavin if he could find out which way, I think there was another call, in which way it was going to open, which way the imbalance was, imbalance of orders on the upside, imbalance of orders on the downside.

He went back to the floor and he said he couldn't find out, just an imbalance of orders.

Q Did there come a time when Geon finally opened?

A Well, yes.

Q When was that, sir?

A I think it was 10:33, but --

THE COURT: We have got all this testimony about

1 this, and you weren't up there, you were out in Long Island,
2 weren't you?
3

4 THE WITNESS: Yes.

5 THE COURT: I don't want to go through these
6 times with him except insofar as it relates to what he did.

7 Q What happened when Geon opened?

8 A Well, there was some concern, the fact that the
9 stock had opened on the downside, I took that to be bearish.
10 Mr. Lynn took that to be bearish.

11 THE COURT: Did you know whether or not your
12 orders were executed?

13 THE WITNESS: The 1,500 shares, yes, sir.

14 THE COURT: It was?

15 THE WITNESS: Had to be, because I believe they
16 were market orders.

17 THE COURT: They were the only sell orders that --

18 THE WITNESS: Yes.

19 THE COURT: So you were worried about the stock?

20 THE WITNESS: I was worried about the stock,
21 not the 1,500 shares, sir. I took that as bearish. I felt
22 with the way the stock had been acting, the way it closed
23 the night before, very nicely, very strongly, what we call
24 at a new recovery high, that for the stock to open on the
25 downside, on an imbalance of orders with what we call a gap,

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was certainly a sign to me to be suspicious, if not
frightened.

Q Did there come a time when you placed orders to
sell Geon stock that morning for your own accounts and
customers accounts?

A Yes.

Q When was that?

A I would say, 10, 12, 15 minutes after the
opening, sir.

Q How many shares did you sell for all the accounts
which you managed?

A There were two accounts involved, total of 800
shares: 550 shares for my account, 50 shares for
Mrs. Susan Barlows' account.

Q Did you direct Mr. Leopold to solicit the sale
of another 100 shares from Mr. Horowitz?

A No. 300 shares, I believe, maybe four. Yes. I
did direct that.

Q And did Mr. Lynn to your knowledge also sell that
day?

A Yes.

Q Would you please explain the circumstances, or
exactly how you put in your orders?

A Yes. I called up Mrs. Barlow and told Mrs. Barlow

2 that --

3 THE COURT: Who is Mrs. Barlow?

4 THE WITNESS: She is the account that I sold
5 250 shares for, your Honor, of the 800. That I did not like
6 the opening, that again the risk reward ratio, and so forth,
7 and I was selling my security and I would recommend selling
8 hers.

9 She said, whatever you do, you know, for yourself,
10 do for me. And I watched the stock trade for a few moments,
11 didn't like the way the stock was trading. I think it was
12 down to approximately 14 by that time with volume coming
13 into it, judging from the machine, and I called up
14 Mr. Slavin to have Mr. Slavin handle my 800 shares. I was
15 told he was on with Mr. Lynn already. I walked out to
16 Mr. Lynn's desk, he was on with Mr. Slavin selling, I
17 think, approximately 500 shares.

18 I said hold him on for me, please, and he handed
19 me the phone. I said, Marty, sell 800 shares. At that
20 particular moment Marvin Rauch, who sits right in front said,
21 I have 1,200 more shares, can you make that 2,000? I said,
22 certainly, and I said to Mr. Slavin, can you make that 2,000?
23 He said, fine. And that was it.

24 Q Did there come a time when you became aware that
25 Mr. Rauch had either crossed, or sold Geon securities for

2 Mr. Boesky that day as well?

3 A Yes.

4 Q How did you become aware of that?

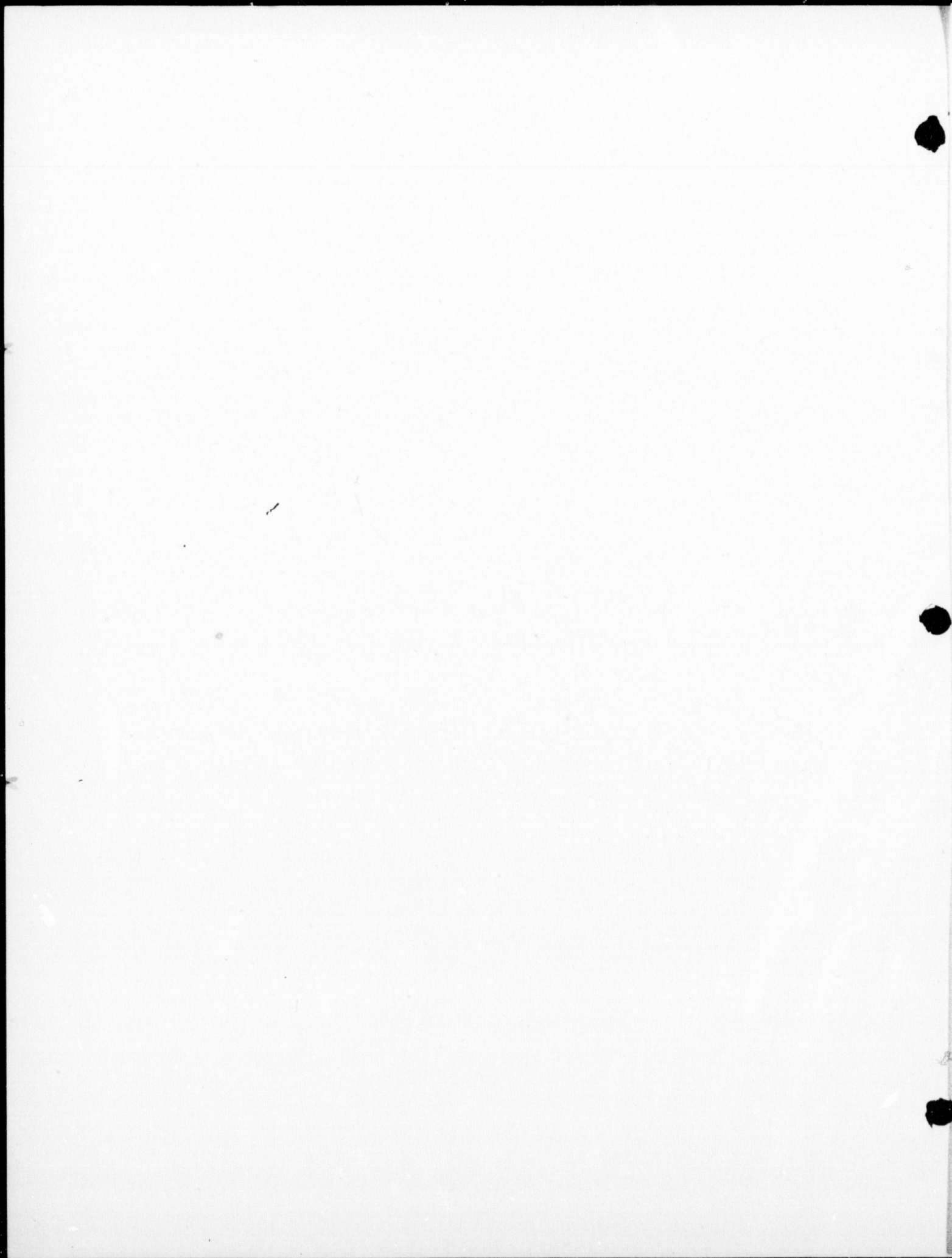
5 A Mr. Rauch came into my office upset, saying that
6 he had received a call from Mr. Boesky and Mr. Boesky was
7 tremendously irate over the selling that we had done in the
8 Hewlett office, and he was incensed by the lack of pro-
9 fessionalism, that he would be in the crowd buying as
10 Edwards & Hanley, and somebody else would be in the crowd
11 selling as Edwards & Hanley, and I'm sure in some uncertain
12 terms he told Marvin, Mr. Rauch, what he thought of the
13 situation.

14 I was upset because Mr. Rauch was upset, so I
15 called up Mr. Boesky and I don't think I spoke to him that
16 time, I think he said he was going to call back or somebody
17 told me he would call back.

18 I finally did speak to him, and he was irate and
19 he was upset and he said, if we have any more stock I should
20 come to him, that's when I was sure that he was a buyer,
21 and I said, fine.

22 Next thing I know Mr. Rauch came in and said he
23 had received another phone call from Mr. Boesky and he was
24 coerced, almost --

25 THE COURT: He was what?



2 THE WITNESS: Coerced into selling them 5,000
3 shares. He was pushed.

4 THE COURT: Who was pushed?

5 THE WITNESS: Mr. Rauch felt that he was
6 pressured by Mr. Boesky to sell him shares if he had shares
7 for sale.

8 Q Did Mr. Rauch indicate to you whether or not
9 4,400 of those shares came from his own account?

10 A At that time he did. Actually, he came in to
11 ask me how the orders should be handled, because it had to
12 be sent attention of a Phil De Leo, and he asked did that
13 have to be coded a certain way, and I wasn't sure, and that's
14 when the conversation came about.

15 THE COURT: All right. We will recess now
16 until 2:00 o'clock.

17 (Luncheon recess.)

18 (Time noted: 12:40 p.m.)

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